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## BEFORE THE ARIZONA CORPORATE COMMISSION

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WILLIAM A. MUNDELL  
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JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

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AZ CORP COMMISSION  
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IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH §271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

## NOTICE OF FILING

Qwest Corporation ("Qwest") hereby provides notice of filing the attached General Terms and Conditions, Section 272 and Track A Report issued in the multi-state proceeding on September 21, 2001. After all the parties have submitted their comments on this report in the multi-state proceeding, Qwest will file a summary of consensus and disputed issues with the Arizona Corporation Commission.

DATED THIS 27<sup>th</sup> day of September, 2001.

Respectfully submitted,

Qwest Corporation


By: 

John Munn  
1801 California Street, Suite 4900  
Denver, CO 80202  
(303) 672-5823

Arizona Corporation Commission

DOCKETED

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DOCKETED BY	
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FENNEMORE CRAIG, P.C.  
Timothy Berg  
Theresa Dwyer  
3003 North Central Ave., Suite 2600  
Phoenix, AZ 85012  
(602) 916-5421

ORIGINAL and 10 Copies filed  
this 27<sup>th</sup> day of September, 2001 with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ

COPY hand-delivered/e-mailed this 27<sup>th</sup> day of September, 2001 to:

Maureen A. Scott  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Steve Olea, Acting Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge  
Jane Rodda, Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix, AZ 85007

Caroline Butler  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

COPY mailed/e-mailed this 27<sup>th</sup> day of September, 2001 to:

Steven H. Kukta  
SPRINT COMMUNICATIONS COMPANY  
1850 Gateway Drive, 7<sup>th</sup> floor  
San Mateo, CA 94404-2567

Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Thomas Campbell  
Lewis & Roca  
40 N. Central Ave.  
Phoenix, AZ 85004

Joan S. Burke  
Osborn Maledon, P.A.  
2929 N. Central Ave., 21<sup>st</sup> Floor  
PO Box 36379  
Phoenix, AZ 85067-6379

Thomas F. Dixon  
Karen L. Clausen  
Worldcom, Inc.  
707 17<sup>th</sup> Street # 3900  
Denver, CO 80202

Scott S. Wakefield  
Residential Utility Consumer Office  
2828 North Central Ave., Suite 1200  
Phoenix, AZ 85004

Michael M. Grant  
Todd C. Wiley  
Gallagher & Kennedy  
2575 E. Camelback Rd.  
Phoenix, AZ 85016-9225

Michael Patten  
Roshka Heyman & DeWulf  
400 North Fifth St., Ste. 1000  
Phoenix, AZ 85004-3906

Bradley Carroll, Esq.  
Cox Arizona Telcom, LLC  
1550 West Deer Valley Rd.  
Phoenix, AZ 85027

Daniel Waggoner  
Davis, Wright & Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Traci Grundon  
Davis Wright & Tremaine  
1300 S.W. Fifth Avenue  
Portland, OR 97201

Richard S. Wolters  
Maria Arias-Chapleau  
AT&T Law Department  
1875 Lawrence Street # 1575  
Denver, CO 80202

David Kaufman  
e.Spire Communications, Inc.  
343 W. Manhattan Street  
Santa Fe, NM 87501

Alaine Miller  
XO Communications, Inc.  
500 108<sup>th</sup> Ave. NE, Suite 2200  
Bellevue, WA 98004

Diane Bacon, Legislative Director  
Communications Workers of America  
5818 N. 7<sup>th</sup> St., Suite 206  
Phoenix, Arizona 85014-5811

Philip A. Doherty  
545 South Prospect Street, Suite 22  
Burlington, VT 05401

W. Hagood Bellinger  
5312 Trowbridge Drive  
Dunwoody, GA 30338

Joyce Hundley  
U.S. Dept. of Justice  
Antitrust Division  
1401 H Street, NW, # 8000  
Washington, DC 20530

Andrew O. Isar  
Telecommunications Resellers Association  
4312 92nd Ave., NW  
Gig Harbor, WA 98335



Raymond S. Heyman  
Two Arizona Center  
400 North 5<sup>th</sup> Street, Suite 1000  
Phoenix, AZ 85004-3906

Douglas Hsiao  
Rhythms Links, Inc.  
6933 Revere Parkway  
Englewood, CO 80112

Mark Dioguardi  
Tiffany and Bosco, PA  
500 Dial Tower  
1850 N. Central Avenue  
Phoenix, AZ 85004

Thomas L. Mumaw  
Snell & Wilmer  
One Arizona Center  
Phoenix, AZ 85004-0001

Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Lyndon J. Godfrey  
Vice President – Government Affairs  
AT&T  
111 West Monroe  
Suite 1201  
Phoenix, AZ 85003

Gena Doyscher  
Global Crossing Services, Inc.  
1221 Nicollet Mall  
Minneapolis, MN 55403-2420

Andrea Harris, Senior Manager  
Allegiance Telecom, Inc. of Arizona  
2101 Webster, Ste. 1580  
Oakland, CA 94612

Gary L. Lane, Esq.  
6902 East 1<sup>st</sup> Street, Suite 201  
Scottsdale, AZ 85251

J. David Tate  
Senior Counsel  
SBC Telecom, Inc.  
5800 Northeast Parkway, Suite 125  
San Antonio, Texas 78249

M. Andrew Andrade  
Tess Communications, Inc.  
5261 S. Quebec Street Ste. 150  
Greenwood Village, CO 80111

K. Megan Doberneck, Esq.  
Covad Communications  
4250 Burton Street  
Santa Clara, CA 95054

Richard Sampson  
Z-Tel Communications, Inc.  
601 S. Harbour Island, Ste. 220  
Tampa, Florida 33602

Dana Poole-McBride

PHX/1228462.1/67817.150

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## I. Scope of This Report

This report discusses the group five issues that form part of the seven-state workshop process created in order to address Qwest's compliance with the Section 271 Checklist of the Telecommunications Act of 1996. The issues addressed in this report were originally to be included as part of other subject groupings. However, the greater than expected number of issues to be addressed required that they be treated in separate workshops. This report addresses the following issues:

- General Terms and Conditions (which affect a broad range of Section 271 Checklist Items)
- Section 272 Requirements
- Track A Requirements

Group five issues originally included consideration of the public interest standard of Section 271(d)(3)(c), which provides that the FCC shall not approve a BOC's application to provide in-region, InterLATA service unless "the requested authorization is consistent with the public interest, convenience, and necessity." There had been uncertainty about how, if at all, these workshops would consider the post-entry assurance plan aspects of the public interest standard.

This uncertainty arose from the fact that the Qwest Regional Oversight Committee (ROC) was conducting, contemporaneously with but separate from these workshops, a Qwest Post-Entry Performance Plan Collaborative (the PEPP Collaborative), whose goal was to provide a structured negotiation process for creating a plan that would create inducements sufficient to assure that local markets would remain open should Qwest receive authorization to provide in-region InterLATA. Twelve state public services commissions, including all seven of those participating in these workshops participated in the efforts of the PEPP Collaborative. The efforts of the collaborative, which were both substantial and commendable, produced a lengthy list of agreements on issues, as well as an identification of a number of remaining areas of disagreement among the collaborative participants. Those participants included representatives from the participating commissions, Qwest, a large number of CLECs, and other stakeholders from the participating states.

After a number of workshops and other exchanges of plans, proposals, and information, Qwest announced, in May of 2001, its belief that further workshops would not be warranted. There issued then a report summarizing the progress of the PEPP Collaborative. Thereafter, the seven state commissions participating in these workshops, joined by the commissions of Nebraska and Washington, decided that these workshops would constitute an appropriate forum for addressing specifically the differences remaining from the PEPP Collaborative process, and, more generally, the relationship between Qwest's Performance Assurance Plan (filed with each state after the end of the PEPP Collaborative) and the public interest standard.

We scheduled and have since held two weeks of hearings on these post-entry assurance plan issues. Briefing is completed and a report on the Performance Assurance Plan issues

is scheduled to be issued in October of 2001. A review of the record and the initial briefs makes it clear that Qwest's Performance Assurance Plan is central to the consideration of the Section 271(d)(3)(c) standard. It is difficult to conceive how a coherent treatment of the public interest, convenience, and necessity can be made without consideration of Performance Assurance Plan issues. Therefore, we have decided to defer the treatment of the remainder of the public interest issues (all of which have been addressed in testimony, comments, and briefs in the workshop sessions covering the group five issues) to the October report.

The testimony and comments on the remainder of the public interest issues have been comprehensive. Main and reply briefs have fully argued all of the relevant issues. Moreover, the comments, testimony, and briefs on the Performance Assurance Plan are similarly comprehensive and thorough. Therefore, there will be no need or opportunity for further submissions prior to the issuance of that October report.

## **II. Disputed Issues And Recommendation Summary**

### **A. Issue Carried Over From First Report**

#### **1. Landowner Consent to Agreement Disclosure**

The first report recommended that CLECs be required either to: (a) obtain landowner consent, or (b) provide Qwest with indemnification before Qwest would be required to provide CLECs with the right of way agreements under which Qwest facilities occupied third-party property. It was decided to revisit this issue in connection with general terms and conditions issues. AT&T presented no new evidence or argument that would call into question the propriety of the recommendation as a means for assigning to CLECs the costs and risks properly associated with Qwest's providing them a service that is required by the FCC.

### **B. General Terms and Conditions Issues Remaining in Dispute**

#### **1. Comparability of Terms for New Products or Services**

AT&T sought an SGAT provision that would oblige Qwest to offer new products and services under terms and conditions substantially in accordance with those applicable to existing, similar ones. There are already adequate provisions for assuring that the terms and conditions under which offers any required products and services comply with federal statutes, FCC requirements, and state commission requirements. Including such a provision would add unneeded and unhelpful uncertainty to those provisions.

#### **2. Limiting Durations on Picked and Chosen Provisions**

AT&T objected to the SGAT provision that would limit the duration of any offerings made available through provisions allowing a CLEC access to the terms and conditions of offerings from another interconnection agreement to the duration of the agreement from which a CLEC might pick or choose such offerings. The Qwest limitation is, however, reasonable as a means for avoiding the indefinite extension of offerings whose prices or other terms are no longer reflective of current costs or other applicable conditions.

#### **3. Applying "Legitimately Related" Terms Under Pick and Choose**

AT&T objected to what it considered to be Qwest's abuse of its right to apply legitimately related terms and conditions to offerings that CLECs may pick and choose from other interconnection agreements. After changes made by Qwest to respond to this argument, the SGAT adequately provides: (a) that Qwest has the burden to prove the required relationship, (b) that Qwest must provide a written explanation, and (c) means for promptly and effectively resolving disagreements. There was no showing of a patterned abuse that would call for measures beyond these.

#### **4. Successive Opting Into Other Agreements**

AT&T objected to Qwest's refusal to allow a CLEC to opt into an interconnection agreement that was itself created by another CLEC's opting into a different agreement. This refusal is inappropriate because it denies CLECs their established rights to opt into any other effective agreement. The SGAT should be changed to preclude such a refusal.

#### **5. Conflicts Between the SGAT and Other Documents**

AT&T wanted to restrict substantially the ability of subsequent tariff changes to supersede SGAT provisions. XO raised a concern about conflicts between the SGAT and other documents more generally, i.e., not limited to tariff/SGAT conflicts. The SGAT already contains provisions that are adequate to control the impact of tariff changes on the SGAT; those provisions allow, as they should, a state commission to permit tariff changes to override SGAT provisions where the commission deliberately seeks to do so. Qwest changed the SGAT sufficiently to address an XO concern; the SGAT now contains a sound rule for assuring that other documents do not expand or contract rights and obligations established by the SGAT. The failure to make a CLEC's determination of any dispute controlling until resolution of the dispute is appropriate. Qwest must undertake the activities necessary to provide services to CLECs; therefore, it should have provisional authority to decide what kinds of operational rules and requirements it must use to do so, subject to eventual determinations about the propriety of those rules and requirements.

#### **6. Implementing Changes in Legal Requirements**

AT&T objected to an SGAT provision that would allow Qwest to stop immediately the provision of any product or service after a change in law removed Qwest's obligation to provide it. AT&T noted that the instantaneous approach would favor Qwest because it is easier to stop suddenly the provision of something than it is to develop the capability to provide a product or service newly made obligatory. Qwest proposed suitable language for promoting a reasonable transition when either an old obligation would end or a new one would begin as a result of changes in legal requirements. The Qwest proposed language also appropriately allowed for truing up to any later dispute resolution involving the change in requirements. The SGAT would address the AT&T concern insofar as it had merit, should Qwest agree to incorporate its proposed SGAT Section 2.2 language.

#### **7. Second-Party Liability Limitations**

AT&T commented that Qwest's liability to CLECs for damages under the SGAT was too limited. Part of the disagreement related to how payments under the PAP will be treated; those disagreements will be discussed in the next report in these workshops. Some of AT&T's comments or arguments confused second-party (i.e., CLEC) liability with third-party (e.g., end-users or members of the public) liability, and were, therefore, not appropriate for consideration in the context of the SGAT's second-party liability provisions, which were at issue here. However, the SGAT did inappropriately exclude liability for damage to second-party tangible property, and should be changed to correct this deficiency. The remaining issues were whether gross negligence is a proper standard of liability and where liability for fraud by customers should lie. The exclusion of gross



negligence as a standard (i.e., requiring willful or intentional conduct), as Qwest proposed, is appropriate under the commercial circumstances here. With certain changes, AT&T's approach to dealing with the customer fraud issue should be incorporated into the SGAT.

#### **8. Third-Party Indemnification**

AT&T commented specifically that Qwest should bear responsibility for damages that CLECs pay their own end users as a result of poor Qwest performance and, more generally, that the SGAT's indemnity provisions should be broadened to more closely mirror those found in competitive commercial settings. AT&T also argued for the creation of incentives to make Qwest, as a monopolist, more apt to perform adequately in serving CLECs. The question of incentives will be addressed in connection with the Performance Assurance Plan; the issue here should be limited to responsibility for damages. Qwest's SGAT limitations are generally consistent with the available evidence of what might be expected in a competitive marketplace. However, the SGAT should be amended to provide that Qwest will indemnify CLECs (and vice versa) for bodily harm and damage to tangible property that results from Qwest's negligence or intentional or willful conduct.

#### **9. Responsibility for Retail Service Quality Assessments Against CLECs**

XO commented that Qwest should bear responsibility for assessments that state commissions levy against a CLEC for meeting retail performance standards, in cases where Qwest failed to provide the CLEC with related wholesale services that met SGAT standards. Such an immutable rule is neither necessary nor appropriate. CLECs may argue questions of third-party responsibility for their failure to meet retail standards in proceedings that set or enforce such standards. Commissions can then decide on the basis of a full record, as opposed to the presumption that would be effectively created by XO, whether and what assessments should be levied against a CLEC.

#### **10. Intellectual Property**

AT&T presented SGAT language that it said would resolve its concerns about the mutual obligations of SGAT parties to deal with intellectual property issues. The frozen SGAT contained language largely incorporating AT&T's proposal; however, the lack of briefing made it difficult to determine whether this issue had been resolved to all parties' satisfaction. Absent comments to the individual commissions on this report, it should be assumed that such agreement has been reached.

#### **11. Continuing SGAT Validity After the Sale of Exchanges**

AT&T proposed a series of provisions that would apply should Qwest seek to sell exchanges: transferring SGAT obligations to the exchange purchaser, providing CLECs with prior notice of the sale, facilitating CLEC discussions with the transferee, and waiving objections to commission authority to impose SGAT obligations on the transferee or CLEC participation in commission proceedings. Qwest agreed to provide notice and to facilitate discussions. AT&T's proposal to require Qwest to waive objections to commission authority or to CLEC participation in commission proceedings

are against public policy and the normal rules of construction applicable to statutes conferring authority on state agencies. The SGAT should be changed to provide a short period during which the SGAT will continue to apply while the commission exercises any existing power it may have to examine and condition the transfer of exchanges by Qwest.

## **12. Misuse of Competitive Information**

AT&T cited one instance from Minnesota of an abuse of competitive information to support a requirement that Qwest be made to offer a comprehensive showing that Qwest retail marketing personnel have no access to CLEC confidential customer information. The issue AT&T raised is very serious, but its evidence falls far short of proving a failure to meet Section 271 requirements or of supporting an extensive remedial plan. However, the record does not contain substantial evidence of what Qwest does to: (a) minimize the possibility of, (b) discourage, (c) detect, and (d) punish inappropriate contact by its resources. Therefore, in order to provide an adequate baseline for determining that adequate measures are in place, Qwest should within 30 days provide each state commission with a description of its programmatic efforts in these four key steps in controlling the use of sensitive customer information.

## **13. Access of Qwest Personnel to Forecast Data**

AT&T argued that Qwest did not adequately identify the persons to whom access to individual CLEC forecast information (recognized by the SGAT to be sensitive) could be made available. XO and AT&T both objected as well to Qwest's refusal to restrict access to aggregated CLEC forecast data. The SGAT would properly limit access to individual CLEC forecast data, if it were to include a recommended limitation on access to that data by Qwest legal representatives. The SGAT should be interpreted as not allowing access to aggregated data to any population broader than that entitled to receive individual data. Moreover, the SGAT should be changed to require Qwest to take precautionary steps in cases where it is ordered to provide CLEC forecast data by a state commission.

## **14. Change Management Process**

The process that Qwest calls CICMP constitutes the change management process that Qwest offers to comply with FCC requirements. Qwest was making significant changes to this process while the workshops took place. Therefore, the record did not allow an assessment of Qwest's compliance with FCC requirements applicable to change management processes. No constructive recommendations for the state commissions or, in turn, the FCC about CICMP can thus be made.

## **15. Bona Fide Request Process**

AT&T raised three discrimination concerns about the SGAT bona fide request (BFR) process: (a) Qwest failed to show that it required a similar internal process when its end users asked for non-tariffed services, (b) Qwest did not provide CLECs with sufficient notice of the existence of prior, similar BFRs, and (c) there were no objective standards for standardizing products and services made available under repeated BFR requests. First, AT&T failed to demonstrate that there is an actual retail analogue for the BFR

process that CLECs use. Second, Qwest was unduly reluctant to provide CLECs with help that would serve to disclose what other CLECs have asked for through BFRs. This reluctance is inappropriate; Qwest has an obligation to make available to others what it has made available to one. The SGAT needs to be changed to provide a practical method for disclosing the terms and conditions of access to its network that Qwest has made available through BFRs. Third, the question of repeat BFRs of a similar nature is not a common one; Qwest had only received 17 BFRs in the more two and one-half years leading up to the workshops. The new SGAT language this report recommends to resolve AT&T's concern should help significantly in cases where another CLEC has already been granted a BFR in similar circumstances. No more has been shown to be required.

#### **16. Scope of Audit Provisions**

AT&T wanted to remove the SGAT provision that limited audits to billing information. The SGAT should be expanded to allow audits addressing compliance with requirements to protect confidential information that one party supplies to another. However, broadening them to other areas of Qwest operations is not only unduly intrusive, it is not necessary. The PAP workshop has considered what inducements, such as monetary payments and root cause analyses, are necessary to assure proper performance by Qwest. Allowing what amount to "performance" audits on top of these measures, could give CLECs very broad (and unreciprocated) access to information about how and how well Qwest performs activities that may give it a competitive edge.

#### **17. Scope of Special Request Process**

The SGAT allows the so-called "SRP" to be used as an expedited way to get access to UNE combinations about which there is no technical feasibility concern. AT&T asked that it be expanded to apply to all non-standard offerings for which technical feasibility is not in question. AT&T's request is appropriate; nothing in the record would support the conclusion that the SRP is only applicable in the case of UNE combinations. However, SGAT Exhibit F, which addresses the SRP, already appears to allow it to be used for more than just UNE combination requests.

#### **18. Parity of Individual Case Basis Process with Qwest Operations**

AT&T made the same argument here that it did in the case of the BFR process; i.e., Qwest discriminated against CLECs because there was no similar process Qwest used when addressing similar requests from its own customers. As was true in the BFR case, so here did AT&T fail to demonstrate that there is a proper retail analogue, thus making its parity argument inapt.

### **C. Section 272 Separate Affiliate Requirements**

The record demonstrates that Qwest has met the each of the separate affiliate requirements established by section 272 of the Telecommunications Act of 1996. The issues resolved in making this recommendation are discussed immediately below.

## **Separate Affiliate**

### **1. Separation of Ownership**

No participant questioned the evidence Qwest presented to show that the ownership of Qwest Communications Corporation (QCC), which is the affiliate designated to provide in-region, InterLATA service, is sufficiently separated from that of the BOC, which is Qwest Corporation (QC).

### **2. Prior Conduct**

AT&T said that three prior instances, in which the FCC had found Qwest to be providing improperly services that constituted in-region, InterLATA services, demonstrated a substantial and predictive history of Qwest's non-compliance with Section 272 requirements. AT&T's examples do not show that Qwest either fails to understand the need for a separate affiliate. Therefore, there is no reason to predict from these examples that Qwest, after having established a separate subsidiary, will fail to operate it in accord with applicable requirements.

## **Books and Records**

The record here gives rise to a substantial concern about the sufficiency of recent Qwest efforts to begin compliance with transaction-related requirements of section 272(b)(2). Therefore, Qwest should provide by November 15, 2001 the results of a third party examination to verify that those changes are now producing an accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with transactions between the BOC and the 272 affiliate. This examination should cover the months from April through August of 2001. This recommendation arose from comments and arguments made in six areas (discussed immediately below) related to the Section 272(b)(2) books and records requirements.

### **1. Generally Accepted Accounting Principles**

AT&T conducted a review of the records of transactions between the BOC and the 272 affiliate. This examination produced a number of findings that Qwest failed to make timely records, accruals, and payments for a number of transactions. While Qwest was able to demonstrate that a number of AT&T's findings were invalid, some were not responded to and Qwest conceded that there were at least what it would term "isolated instances" and insignificant failures to bill or accrue relevant expenses on a timely basis. Much of Qwest's argument focused on how it accounted for transactions from and after the date of its designation of an entity as a Section 272 affiliate. This argument misses the mark; what is more interesting is whether Qwest's past conduct gives rise to concerns about its ability to keep books and records in accord with applicable requirements. Qwest made a showing that it has recently undertaken substantial efforts to assure that it keeps such books and records. There is not substantial evidence to demonstrate that those measures are yet fully effective.

## **2. Materiality**

The discussion of the books and records issue here was not aided by arguments about the accounting profession's use of the term "materiality." The examination recommended here should apply the materiality standard, but limit it to the universe of transactions between the BOC and the 272 affiliate for the April-August 2000 time period.

## **3. Documentation**

AT&T argued that Qwest's decision to stop posting to its web site the details of specific transactions with the Section 272 affiliate violated the FCC's public-notice requirements. However, AT&T overstated the requirement, which extends only to providing sufficient detail to permit a non-affiliated entity to make a business decision about whether to avail itself of the right to take under the same terms and conditions the same services being provided to the Section 272 affiliate. The kind of detail that AT&T sought is not necessary for this purpose. Moreover, the recommended examination would address whether the postings Qwest made during the period covered are sufficient and accurately reflective of the terms and conditions actually made available.

## **4. Internal Controls**

AT&T said that the instances found in the examination described under the *Generally Accepted Accounting Principles* discussion above also showed a lack of sufficient internal controls. The recommended examination would test the adequacy of internal controls in the wake of the changes that Qwest says it has made recently.

## **5. Separate Charts of Accounts**

AT&T said that it had difficulty in finally securing from Qwest charts of accounts for the BOC and 272 affiliates. AT&T did get the charts; thereafter it made no argument that it found any problem with them. Its argument that the difficulty in obtaining them, the source or duration of which was not explained, shows Qwest's lack of diligence in meeting the separate charts of accounts requirement, rests upon an inference that is not supported by the facts it presented.

## **6. Separate Accounting Software**

AT&T said that it found no evidence of the use of separate accounting software by the BOC and the 272 affiliate. None is required; AT&T also acknowledged that the different Qwest entities have separate accounting codes to keep their records separate. There is no evidence to support a conclusion that the accounting of the affiliates is inadequately separated.

## **Separate Officers, Directors, and Employees**

AT&T made a number of arguments, addressed below, that Qwest failed to meet the requirements applicable to the separation of officers, directors, and employees between the BOC and the 272 affiliate. The evidence, however, demonstrates that Qwest has complied with the applicable requirements.

### **1. Routine Employee Transfers**

AT&T said that the "revolving door" atmosphere between Qwest affiliates has produced employee movements that subvert the purpose of the Section 272(b)(3) that the 272 affiliate have separate employees. First, the standard explicitly set forth is simultaneous employment, not transfers of employment from one affiliate to another. Second, the record comes nowhere near demonstrating a free and massive movement back and forth between the BOC and the 272 affiliate. Third, Qwest produced evidence of reasonable efforts, whose existence and sufficiency were not challenged, to protect the confidentiality of information upon the transfer of employment.

### **2. 100 Percent Usage of Another Affiliate's Employee's Time**

AT&T argued that many individuals employed by the BOC, assigned all of their time to the 272 affiliate, thus subverting the purpose of Section 272(b)(3). Time-sharing per se is not pernicious; in fact, it is a central element of the allowable sharing of services among affiliates. However, long-term assignment of all an employee's time to an affiliate can raise concerns in some cases. Qwest has agreed to limit full-time assignments to no more than 4 of any 12-month period, which constitutes an adequate way to mitigate such concerns.

### **3. Award Program Participation**

AT&T cited 272-affiliate employee participation in an award program available to BOC employees as evidence that Qwest had compromised the independent operation of the two entities. AT&T did not fully explain the nature of the award program. However, the evidence that AT&T did provide ran counter to AT&T's stated concern, which was that the program would induce an employee of one company to spend significant amounts of time in the service of an affiliate.

### **4. Comparing Payroll Registers**

Qwest provided a recent comparison of BOC and 272 affiliate payroll registers; there was agreement that it showed no overlap. However, AT&T said that the failure of Qwest to have performed such comparisons previously meant that it could not verify non-overlap for earlier time periods. The evidence of record demonstrates no overlap, a commitment by Qwest to preclude overlap, and a reasonable basis for expecting future Qwest efforts to control overlap appropriate. No more is or should be required.

### **5. Separate Payroll Administration**

AT&T argued that common payroll administration for the BOC and the 272 affiliate was inappropriate. This argument is unsound. The FCC, in recognition of the fact that companies such as Qwest (and AT&T for that matter) should be able to exploit economies of scale and scope, specifically allows common services, except in certain cases not relevant here.

## **6. Officer Overlap**

AT&T raised concern about an employee who, after the merger, moved from being a 272-affiliate officer to becoming a director of the BOC. Qwest presented evidence sufficient to demonstrate that this employee was never in violation of the applicable requirements against simultaneous service for the BOC and the 272 affiliate. Moreover, no inference about inattention to the goals of separation can be properly drawn from the case of a single officer changing roles as a merger was being implemented.

## **Transaction Posting Completeness**

### **1. Posting Billing Detail**

AT&T objected to the decision Qwest recently made to stop posting transaction details to its web site. The transaction detail that AT&T sought is not necessary to allow an informed choice about whether to take services. Moreover, the purpose of posting is not to provide in a public forum every piece of information that may be necessary to establish parity of treatment.

Qwest does make monthly posting of transaction true up data, it allows the observation of transaction details after execution of a nondisclosure agreement, and the examination recommended above would verify that the posted information conforms to the actual terms and conditions under which an affiliate has been served. These factors support a conclusion that Qwest's transaction postings will be sufficiently complete and detailed.

### **2. Initiation of the Posting of QCC Transactions**

There was a great deal of contradictory evidence and argument about when QCC (the currently designated Qwest in-region, InterLATA service provider) became the 272 affiliate. The evidence shows that Qwest accepts the obligation to post now and into the future and the recommended examination will test whether its recent posting has been sufficient. It serves no useful purpose to argue about past circumstances that clearly involved a transition that Qwest was making from one designated 272 affiliate to another.

### **3. Indefinite Service Completion Dates**

A number of posted Qwest agreements have indefinite completion dates, which AT&T says is in violation of FCC requirements that a project whose terms and conditions are posted include a time length or an estimated completion date. This argument ignores the plain and common reality that service agreements often allow for continuation until cancellation notice is provided by one of the parties. There is no reason to conclude that the FCC intended to prohibit forms of agreement that are commonly used in commercial settings. AT&T has provided no evidence that, for services truly constituting a "project" or for services that do have definite end dates, Qwest has failed to post them. No more should be required.

#### **4. Verifications**

AT&T found a BOC verification of transaction certification that was signed by an officer of the designated 272 affiliate, not by an officer of the BOC, as required. This instance confirms the existence of difficulties in Qwest's treatment of 272 issues during its post-merger transition to a newly designated 272 affiliate. Those difficulties led to the April-August 2001 period examination recommended earlier. That examination's scope includes confirmation that a BOC officer has the requisite knowledge to make the required certifications and will do so. No further actions are required, nor, in the event that such confirmation is provided, should it be concluded that Qwest is unlikely to meet the requirements of section 272 in the future.

#### **Non-Discrimination**

AT&T used the same findings from its examination of Qwest's books and records (primarily those relating to the failure to make timely payments) to support an argument that Qwest cannot meet the non-discrimination test of section 272(c)(1). That issue would be included in the examination recommended earlier. AT&T also said that Qwest has not committed to a number of items that the FCC has said are important in assessing compliance with this statutory requirement. This position ignores a number of other occasions in prior workshops where issues of discrimination were considered and the specific and general commitments Qwest made in this workshop regarding the discrimination requirements of section 272(c) and (e). Together they provide a basis for concluding that there are adequate measures to assure that Qwest does not discriminate in favor of its 272 affiliate.

#### **Compliance With FCC Accounting Principles**

AT&T's argument that Qwest fails to comply with the section 272(c)(2) requirement to account for all transactions in accord with FCC approved accounting principles, arises from the same instances it cited to prove lack of compliance with Generally Accepted Accounting Principles and the lack of adequate internal controls. The earlier treatment of those issues and the recommendations related thereto are equally applicable to the argument made here.

#### **D. Track A Requirements**

Satisfaction of the Track A provisions of 47 U.S.C. § 271(c)(1)(A) requires answers to four questions:

- Whether there are binding agreements approved under section 252
- Whether Qwest is providing access and interconnection services to CLECs
- Whether CLECs are providing telephone exchange service to residential and business customers



- Whether those providers are offering service over their own facilities (including UNEs leased from Qwest) or predominantly over their own facilities in combination with resale services.

As is described more fully below, Qwest's evidence demonstrates that it meets all of the requirements of Track A in all seven of the participating states, with two exceptions:

- Qwest has not presented substantial, credible evidence that CLECs are serving residential end users in Idaho
- Qwest has not presented substantial, credible evidence that CLECs are serving residential end users in New Mexico

### **1. Existence of Binding, Approved Interconnection Agreements**

Qwest presented evidence demonstrating the existence of over 400 interconnection agreements in the seven states totally, with no fewer than 39 agreements in any single state. There was some evidence that some of the carriers do not do business under these agreements at present, but no participant questioned the widespread existence of agreements meeting the applicable test.

### **2. Provision of Access and Interconnection to Competitors**

Qwest presented evidence demonstrating that it is providing access and interconnection in each of the seven states, to at least six CLECs in each. Qwest's evidence showed that it was providing from 2,000 to over 100,000 unbundled loops to CLECs in each of the seven states. This evidence specifically demonstrates Qwest's compliance with this aspect of the Track A standard, and was unchallenged by any participant.

### **3. Existence of Competing Providers of Residential and Business Service**

Qwest presented evidence that CLECs in fact were providing service in each of the seven states to residential and commercial customers. Qwest offered evidence quantifying the number of unbundled loops it has been providing to CLECs as evidence of the number of access lines served by CLECs. It supplemented that evidence by providing an estimate of CLEC access lines served through loops that bypass Qwest's loop plant entirely. It based that estimate on the amount of numbers it was porting. Qwest adjusted that estimate downward by cutting the ported numbers in half (to allow for customers who initially migrated to a CLEC, but who then discontinued service from that CLEC) and by adjusting for the unbundled loop numbers (to avoid double counting). Qwest made no effort at all to estimate the number of access lines CLECs were serving through numbers not ported from Qwest.

Qwest buttressed this quantitative evidence by presenting what it knew from its generally obtained knowledge and responses from data requests issued to CLECs participating in these workshops. This evidence provided qualitative indications of which CLECs were serving residential or business customers in each of the seven states.

AT&T made arguments that appeared to suggest some required level of CLEC market share, but it did not specify what that was. There is in fact no market share test, and the

numbers presented in Qwest's combined actual and estimated access line counts are sufficient to meet the test, provided that the numbers are adequately substantiated.

AT&T criticized Qwest's estimating method, but it is clearly more conservative than one already considered by the FCC in determining another BOC's satisfaction of this test. The Qwest method is unsophisticated, but it applied a reasonable assumption that there is a relationship between numbers ported and access lines, it used reasonably conservative assumptions to measure that relationship, and it also did not consider an entirely separate source of CLEC access line numbers (i.e., those served by bypass and without number porting). The Qwest method was sufficient to make a prima facie case; thus, the AT&T attack upon it, without the presentation of any contrary evidence or of any factual evidence to support its attack, was not persuasive.

There was, however, one aspect where Qwest's evidence was not persuasive. It used a particularly rough means for segregating its unbundled loop counts and access line estimates between residential and commercial service. That method will serve adequately as a way to apportion lines when there is other evidence that CLECs are serving residential customers. However, it is too rough to serve as independent proof that any residential customers at all are being served. Qwest's independent evidence of service to residential customers consisted of the qualitative evidence it presented. There was no specific evidence offered to show that any CLEC served residential customers in Idaho and New Mexico. There was evidence of residential service by CLECs in the other five states. Therefore, it can be concluded that Qwest has failed to show that CLECs are providing residential service in New Mexico and Idaho.

#### **4. Existence of Facilities Based Competitors**

Qwest's evidence supporting fulfillment of this aspect of the Track A standard was combined with its evidence regarding the immediately preceding one. There was no specific CLEC contest of compliance with this aspect. Qwest has provided evidence sufficient to support a conclusion that it meets the facilities-based competition standard, subject to the previously noted conclusion about service to residential customers in New Mexico and Idaho.

### III. General Terms and Conditions

#### A. Background – General Terms and Conditions

Qwest's Statement of Generally Available Terms and Conditions (SGAT) is an offer for an agreement between Qwest and any requesting CLEC.<sup>1</sup> Section 5 of Qwest's SGAT contains the general terms and conditions governing the relationship between the CLEC and Qwest. While these general terms and conditions are not part of a checklist item under the Act, they "are an integral part of how Qwest purports to implement its specific checklist requirements identified in the SGAT sections..."<sup>2</sup> A review of general terms and conditions was not initially included in this multistate proceeding, but was added to the agenda later to when it became clear that this topic was important.

#### B. Issue Carried Over from First Report

##### 1. Landowner Consent to Agreement Disclosure Issue

There was a request to revisit the proposed resolution of the third unresolved *Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way* issue (*Access to Landowner Agreements*) from the March 18, 2001 *Paper Workshop Issues* report in these workshops. AT&T had asserted that CLECs must sometimes have access to the agreements that Qwest has with private landowners and building owners, in order to determine the scope of Qwest's ownership and control. The parties disagreed about whether landowners should have to give consent before Qwest may disclose to CLECs the agreements that give Qwest permission to occupy their property. The proposed resolution of that issue in the earlier report was to require the addition to the SGAT of a new Section 10.8.4.1.3.1, as follows:

*Alternatively, in order to secure any agreement that has not been publicly recorded, a CLEC may provide a legally binding and satisfactory agreement to indemnify Qwest in the event of any legal action arising out of Qwest's provision of such agreement. In that event, the CLEC shall not be required to execute either the Consent to Disclosure form or the Consent Regarding Access Agreement form.*

Qwest's comments to the individual commissions on this report accepted this resolution. Qwest subsequently stated that it continued to support the report's resolution of this issue. AT&T recommended an alternate approach, which this report will now consider. AT&T commented on its proposal on June 20, 2001. It said that a separate indemnification provision for this purpose was not appropriate; the general SGAT section on indemnification should apply. AT&T commented that neither party was in a position to assure that there would be no "frivolous law suits" by landowners claiming

<sup>1</sup> Rebuttal Testimony of Larry Brotherson, p. 2.

<sup>2</sup> AT&T's Closing Brief on General Terms and Conditions, p.3

confidentiality with respect to their agreements to provide access to their property for Qwest facilities. Therefore, it would be inappropriate to place the entire burden on CLECs for bearing the costs of such litigation.

**Proposed Issue Resolution:** There are several problems with AT&T's argument. First, it shifts between two mutually inconsistent grounds: (a) that there are few or no occasions where landowners will have protected rights, thus suggesting that Qwest should bear the risks involved, and (b) that CLECs will face extensive competitive barriers if they have to bear the risk of defending these lawsuits that will virtually always be "frivolous," according to AT&T.

AT&T is probably correct in defending the first ground. If it is, then its argument that there will be a veritable flood of foolish litigation has no support in the record or in manifest common experience. However, let us assume that AT&T is correct in saying that the costs of these lawsuits could be large. We still face the problem of why that is a reason for saying that Qwest should bear those costs, lest we impose "chilling" and anti-competitive barriers on CLEC market entry. It will cost a negligent CLEC much more to pay for rebuilding a central office where the CLEC's negligence with respect to collocated facilities causes the office's destruction. To take another example, a collocation may cost a CLEC several hundred thousand dollars, or perhaps only a small fraction of that amount. How much the costs of that service are does not bear on the question of who should pay them. High cost collocations pose a substantially greater economic barrier than we are talking about here; yet there is no question there that CLECs should pay the costs that they cause Qwest to bear.

The material question to ask is not how much the costs are or what the risks entail, but who has caused the costs to be incurred or the risks to arise. The 'causer' should pay the costs and that principle does not at all depend on what the magnitude of the costs or risks may be. It is profoundly clear from AT&T's comments that it considers lawsuits to be a risk of doing business. There is no merit in placing them at the feet of Qwest. Those who want Qwest to provide the information should bear the risk. Two acceptable CLEC options for managing those risks have been provided: (a) get landowner releases, or (b) give Qwest relief if the CLEC finds the first option burdensome. In any competitive vendor/customer marketplace, it would be inconceivable to expect the vendor to bear uncompensated risks. Asking CLECs to find a way to bear and mitigate risks associated with a service (the provision of information that Qwest is unquestionably required to offer them) perfectly mirrors what would be expected in normal commercial circumstances.

The AT&T argument that this matter could have been dealt with by reference to the SGAT's indemnification provisions (Section 5.9) ultimately proved to be disingenuous. This indemnification language applies to third-party actions arising from an SGAT signatory (whether Qwest or a CLEC) action that constitutes a "breach of or failure to perform" an SGAT obligation. The landowner claims at issue here would actually arise from full compliance with the applicable SGAT obligation, which is for Qwest to provide the agreements to CLECs. Thus, melding this issue with other indemnification questions is merely another way of accomplishing indirectly what the prior report recommended

against in the first place, which is to transfer to Qwest full responsibility for risks that Qwest must reasonably take to provide a service to CLECs.

To conclude, AT&T: (a) first overstates, as is clear from its own implicitly self-contradictory assertions, the magnitude of the risks at issue, and (b) second, diverges from the sound rule that the costs borne directly and reasonably to provide a service should flow not to the service's provider, but to its beneficiary. The initial recommendation remains appropriate.

## C. Issues Resolved in this Workshop – General Terms and Conditions

### 1. SGAT Amendment Process

SGAT Section 1.7 provided that Qwest could modify the SGAT at any time, even after Commission approval.

Both AT&T<sup>3</sup> and XO<sup>4</sup> objected to this language, arguing that it permits unilateral SGAT amendment without Commission approval. In response, Qwest agreed to delete the existing language and replace it with the following:

*Any modification to the SGAT by Qwest will be accomplished through Section 252 of the Act.<sup>5</sup>*

AT&T did not comment on this changed language, which addresses the unilateral amendment issue, it in its Supplemental Response, or in its closing brief. XO did not brief the issue either. This issue can be considered closed.

### 2. Implementation Schedule

SGAT Section 3.0 imposes specific requirements on CLECs for placing orders for service. XO commented that this section assumes that the parties have no prior relationship.<sup>6</sup> The SGAT requires CLECs to complete a "CLEC Questionnaire" even if the parties are operating under a prior agreement. XO suggested that this section should be modified to permit parties operating under a prior agreement merely to amend any prior implementation schedule, including completion of the Questionnaire.

AT&T<sup>7</sup> said that Section 3.1 required parties to "negotiate" an implementation schedule. Second, AT&T argued that the need for an implementation schedule was not clear, especially for a CLEC that had been doing business with Qwest for a number of years. Finally, AT&T noted that the elements of the CLEC Questionnaire should be identified in the SGAT so that the information that Qwest might seek is fixed for the term of the SGAT.

<sup>3</sup> AT&T's Initial Comments on General Terms at Conditions (AT&T Comments) at 10.

<sup>4</sup> Response Testimony of David LaFrance on Behalf of XO Utah, (XO Response) at 8.

<sup>5</sup> Rebuttal Testimony of Larry B. Brotherson (Brotherson Rebuttal) at 5-6.

<sup>6</sup> XO Response at 8-9.

<sup>7</sup> AT&T Comments at 20-22.

Qwest agreed to remove the implementation schedule requirements from this section. It also agreed that a CLEC with an existing interconnection agreement would not need to complete the new customer CLEC questionnaire.<sup>8</sup> Neither AT&T nor XO briefed this issue. It can be considered closed.

### 3. SGAT Definitions

AT&T noted that Qwest's direct testimony did not contain Section 4 of the SGAT; therefore, the parties had no opportunity to review the current form of definitions in the SGAT.<sup>9</sup> Qwest filed this SGAT section as part of Brotherson's Rebuttal Testimony (Exhibit LBB 1). No further comment was made by any party on this section, with the exception of section 4.24(a) which sets forth the definition for individual case basis (ICB), addressed later in this report. This issue can be considered closed, subject to the later discussion herein addressing ICB issues.

### 4. Discontinuance of Specific Services

XO commented that, while SGAT Section 5.1.3 should allow either party to discontinue a specific service or circuit that is causing interference on the other party's network, this provision was too broad, because it allowed discontinuance for any level of interference.<sup>10</sup> Qwest agreed to modify the section to address XO's concern.<sup>11</sup> XO did not brief this issue. AT&T offered language to change this section also. AT&T commented that Qwest should attempt to resolve issues through good faith negotiation before unilaterally discontinuing service.<sup>12</sup> Qwest did not respond directly to this proposal, but did offer modified language for this section. AT&T did not raise this issue again and did not discuss this section in its closing brief. This issue can be considered closed.

### 5. Term of Agreement

AT&T suggested that SGAT Section 5.2.2.1 implied that the SGAT could only be replaced at the end of the two-year term. AT&T noted that this interpretation would create an inconsistency with rights under section 251(i) of the Act, and suggested language changes. Qwest agreed that there was an inconsistency, and deleted the section.<sup>13</sup> This issue can be considered closed.

### 6. Proof of Authorization

XO stated that state commission and FCC rules already address requirements for proof of authorization to change service providers; therefore it was unnecessary to include them in the SGAT.<sup>14</sup> AT&T made a similar comment, and suggested a language change to

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<sup>8</sup> Brotherson Rebuttal at 14-15.

<sup>9</sup> AT&T Comments at 22.

<sup>10</sup> XO Response at 9.

<sup>11</sup> Brotherson Rebuttal at 19.

<sup>12</sup> AT&T Comments at 23-24.

<sup>13</sup> Brotherson Rebuttal at 18.

<sup>14</sup> XO Response at 9.

section 5.3.1.<sup>15</sup> Qwest agreed to this proposal, but also added section 5.3.2 to give effect to AT&T's language. Qwest noted that these changes would address XO's concerns as well.<sup>16</sup> No participant addressed this section in the briefs; the issue can be considered closed.

## 7. Payments

SGAT Section 5.4 set forth the terms for payment of charges due under the SGAT. Section 5.4.2 permitted Qwest to discontinue processing orders after a CLEC failure to make full payment within 30 days of a bill's due date. AT&T proposed two language changes: (a) to extend the time period from 30 to 90 days, and (b) to require Qwest to seek Commission approval to disconnect in the event of a dispute.<sup>17</sup> Qwest did not agree in its testimony to either change. It stated that it was entitled to payment on time and should not have to wait nearly three months from the time it provided service for payment. Qwest also did not agree to the Commission review requirement. It commented that CLECs with good faith disputes could use the dispute resolution section of the SGAT.<sup>18</sup> The frozen SGAT does reflect a change to require a 10-day notice before the cessation of order processing and it specifically preserves the rights to secure relief from the decision to stop processing orders.

Both XO<sup>19</sup> and AT&T expressed concerns about section 5.4.3. Under this section, Qwest could disconnect service for failure to make full payment, less any disputed amounts, within 60 days of the due date on CLEC's bill. AT&T suggested that this period be extended to 120 days. Qwest rejected this proposal, saying that the change would guarantee a six-month revenue loss to Qwest. Qwest also rejected an AT&T proposal that would require Commission approval before disconnection.<sup>20</sup> The frozen SGAT reflects a change to require a 10-day notice before the service disconnection and it specifically preserves the rights to secure relief from the decision to disconnect.

Qwest did agree to proposed AT&T language that added the words "under this agreement" to sections 5.4.2 and 5.4.3. This change had the effect of limiting charges for which disconnection could be made to those involved in this specific agreement.

AT&T also suggested that the 30-day time period in 5.4.4 for a party to identify problems with a bill be extended to six months. Qwest did not agree to this change.

AT&T also commented that Qwest should change SGAT Section 5.4.6 to provide that the conditions for return of deposits consider only the payment of undisputed amounts. The frozen SGAT reflected this change.

Qwest made substantial changes to address most of the comments and no participant briefed any issues on which Qwest declined to make requested changes. This issue can be considered closed.

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<sup>15</sup> AT&T Comments at 26-27.

<sup>16</sup> Brotherson Rebuttal at 19.

<sup>17</sup> AT&T Comments at 27-29.

<sup>18</sup> Brotherson Rebuttal at 21.

<sup>19</sup> XO Response at 9-10.

<sup>20</sup> Brotherson Rebuttal at 21-23.

## 8. Taxes

AT&T stated that SGAT Section 5.5 was unbalanced, because it seemed to require that almost all taxes be paid by the CLEC. It proposed language changes to the SGAT to require the party who is responsible under applicable law to pay the applicable taxes.<sup>21</sup> Qwest countered that AT&T's reading of this language was incorrect, and stated that the SGAT calls for "no more than is required by applicable law".<sup>22</sup> However, Qwest did agree with AT&T that the result of the section should be to require the responsible party (under applicable law) to pay the given tax. Qwest suggested modifications to meet AT&T's concerns. These modifications, set forth in the Brotherson rebuttal testimony, were later incorporated into the frozen SGAT. This issue can be considered closed.

## 9. Insurance

AT&T and XO raised concerns about the insurance provisions of SGAT Section 5.6. XO commented that: (a) insurance should be part of an interconnection agreement, not the SGAT, (b) if this general provision remained in the SGAT, some type of limitation should be included, and (c) the provision should be made reciprocal.<sup>23</sup> Qwest said that because the SGAT offers terms and conditions for collocation and access to poles, ducts and rights of way, the insurance section is an essential term. Furthermore, Qwest did not want to be obliged to determine whether a CLEC had insurance whenever it entered Qwest's premises. Resolution of that question should instead be accomplished at the beginning of the relationship.<sup>24</sup> The frozen SGAT makes the insurance obligations reciprocal.

AT&T made several proposals for language changes to this section. AT&T would add Section 5.6.1 language that would permit a captive insurance company to provide coverage.<sup>25</sup> The frozen SGAT allows this option. AT&T also suggested that the word "business" be substituted for "comprehensive" in section 5.6.1.3. Qwest agreed to this change. In section 5.6.1.5, AT&T struck the sentence that relieved Qwest of liability for loss of profit or revenues for business interruption, and suggested that this be addressed in the indemnification provision. Qwest agreed that this exclusion is addressed elsewhere, and placed a reference to that provision into this section of the SGAT.

AT&T offered several clarifying changes to Section 5.6.2. The changes made to the language involving the date for providing a certificate were acceptable to Qwest, as was the modification of language naming Qwest as an additional insured. Qwest partially agreed to a proposal to change Section 5.6.2 (3) and (4) were partly agreed to by Qwest.

Qwest changed the SGAT section to address most of the comments made. No participant briefed any insurance issue disputes. This issue can be considered closed.

<sup>21</sup> AT&T Comments at 30.

<sup>22</sup> Brotherson Rebuttal at 24.

<sup>23</sup> XO Response at 10.

<sup>24</sup> Brotherson Rebuttal at 27.

<sup>25</sup> AT&T Comments at 30-32.



#### 10. Force Majeure

SGAT Section 5.7 listed the external events or occasions that may relieve a party from liability for failure to perform its obligations. Both XO<sup>26</sup> and AT&T<sup>27</sup> asked Qwest to remove "equipment failure" from the list. Qwest agreed to eliminate that term from Section 5.7. XO also asked that "government regulations" and "inability to secure products or services of the other persons" be excluded from the force majeure provisions. Qwest responded that it was not appropriate to remove these two items from the list, but it did qualify the entitlement to claim force majeure conditions in the case of third party products, services, or transportation. This issue can be considered closed.

#### 11. SGAT Section 5.11 – Warranties

AT&T offered a change to SGAT Section 5.11, which dealt with warranties, in order to make it consistent with warranty language proposed for section 5.10. This change would add the phrase "Except as expressly set forth in this agreement..." to qualify the general disclaimer against express or implied warranties.<sup>28</sup> The frozen SGAT incorporates the requested change. This issue can be considered closed.

#### 12. Nondisclosure

Section 5.16, the SGAT's nondisclosure section, deals with the handling of confidential and proprietary information. Nondisclosure with respect to CLEC forecasts (Section 5.16.9 of the SGAT) is addressed in the disputed issues section of this report under "Access of Qwest Personnel to Forecast Data". AT&T suggested changes to Section 5.16.1. First, it wanted to include "business and marketing plans" as information that need not be marked confidential in order to be subject to the protections of this section.<sup>29</sup> AT&T also asked that Qwest add new language to this section in order to provide a 30-day period for identification of proprietary information. AT&T proposed that language be added to section 5.16.3 to address in greater detail the circumstances and protections that confidential information require. Qwest responded that AT&T has provided no compelling reason for its proposed changes, and did not agree to change the SGAT. AT&T proposed language for section 5.16.5 that would further explain when confidential information may be disclosed for regulatory and enforcement purposes. Qwest agreed to this proposed change, and revised the SGAT accordingly. AT&T also proposed that a new subsection be added to this section in order to allow a party to seek equitable relief to enforce confidentiality obligations. Qwest agreed to accept this new section with minimal changes. The new section is numbered 5.16.7.

The frozen SGAT made changes that address virtually all of the comments made. No participant briefed this issue, which can therefore be considered closed.

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<sup>26</sup> XO Response at 10-11.

<sup>27</sup> AT&T Comments at 32.

<sup>28</sup> AT&T Comments at 43.

<sup>29</sup> AT&T Comments at 46-47.

### 13. Agreement Survival

AT&T proposed a change to section 5.17.1 to account for the possibility that the SGAT may expire or terminate before or after the two-year term of the Agreement.<sup>30</sup> Qwest agreed to make this change.<sup>31</sup> This issue can be considered closed.

### 14. Dispute Resolution

XO commented that limiting the SGAT Section 5.18 dispute resolution provision to mediation and arbitration under American Arbitration Association processes would foreclose the option of seeking resolution dispute from the Commission.<sup>32</sup> Qwest responded that XO incorrectly read the language, which made it clear that parties "may" demand that the dispute be settled by arbitration, but does not limit the parties to this option.<sup>33</sup> AT&T offered a complete revision to this section. AT&T stated that the parties required a detailed process to follow in the event of a dispute, and proposed language.<sup>34</sup> The frozen SGAT reflects a substantial rewrite of this SGAT Section, incorporating many of the suggested AT&T changes. No participant briefed this issue, which, therefore, can be considered closed.

### 15. Controlling Law

AT&T commented that the federal law applicable to the SGAT under Section 5.19 should not be limited to the Telecommunications Act of 1996.<sup>35</sup> Qwest agreed to a change that would make "federal law" generally applicable.<sup>36</sup> This issue can be considered closed.

### 16. Notices

SGAT Section 5.21 governs notices to the parties. AT&T suggested two additional methods for providing notice: personal delivery and overnight courier.<sup>37</sup> Qwest agreed that these changes are reasonable, and revised the SGAT accordingly.<sup>38</sup> This issue can be considered closed.

### 17. Publicity

XO argued that SGAT Section, which addresses publicity, was overbroad because it might be read to the consent of another party to issue public statements about Commission or judicial proceedings.<sup>39</sup> Qwest agreed conceptually to XO's proposed

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<sup>30</sup> AT&T Comments at 50.

<sup>31</sup> Brotherson Rebuttal at 55.

<sup>32</sup> XO Response at 12.

<sup>33</sup> Brotherson Rebuttal at 59.

<sup>34</sup> AT&T Comments at 50.

<sup>35</sup> AT&T Comments at 51.

<sup>36</sup> Brotherson Rebuttal at 59-60.

<sup>37</sup> AT&T Comments at 52.

<sup>38</sup> Brotherson Rebuttal at 60-61.

<sup>39</sup> XO Response at 12.

change, and offered new language, which is contained in the frozen SGAT.<sup>40</sup> This issue can be considered closed.

### **18. Retention of Records**

AT&T proposed a new SGAT section that would require Qwest to retain records under the SGAT for at least five years.<sup>41</sup> This provision would require Qwest to retain documents and other data for at least five years. Section 18.2.7 of the frozen SGAT requires the retention of SGAT transaction documents for 24 months. No party briefed this issue, nor is there any reason to contest the sufficiency of 24 months as a retention period, particularly given the large number of records likely to be created in the course of Qwest transactions with many CLECs. This issue can be considered closed.

### **19. Network Security**

XO suggested that SGAT Section 11.3 be made reciprocal.<sup>42</sup> Qwest agreed and modified the section accordingly.<sup>43</sup> This issue can be considered closed.

## **D. Issues Remaining in Dispute – General Terms and Conditions**

### **1. Comparability of Terms for New Products or Services**

At the workshops, AT&T proposed a new SGAT section, which it had not previously noted in its pre-workshop filings. AT&T proposed new Section 1.7.2, which would require that Qwest offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services were comparable.<sup>44</sup> AT&T did not brief this issue.

Qwest did brief the issue, opposing the new section on numerous grounds: (a) that SGAT Section 5.1.6 already obligated Qwest to price new products and services in accordance with applicable laws and regulations, (b) that under the CICMP process, Qwest is obligated to allow CLEC input on new products before formally introducing them,<sup>45</sup> (c) that Qwest's rates are already subject to review public service commissions under section 252(f)(2) of the Act, and (d) that the terms "comparable products and services" and "substantially the same rates, terms and conditions" are so vague as to invite lengthy and difficult to resolve disputes.<sup>46</sup>

**Proposed Issue Resolution:** There are already established standards and methods for resolving disputes related to the terms and conditions that Qwest may apply to offerings under its SGAT. Those standards are adequate to assure that such terms and conditions comport with Qwest's obligations under the Act and FCC requirements. Those methods are also sufficient to allow for a resolution of disputes in a timely and effective manner.

<sup>40</sup> Brotherson Rebuttal at 63.

<sup>41</sup> AT&T Supplemental Response at 8.

<sup>42</sup> XO Response at 12.

<sup>43</sup> Brotherson Rebuttal at 65.

<sup>44</sup> June 28, 2001 Transcript at page 37.

<sup>45</sup> SGAT § 12.2.6. and June 28, 2001 Transcript at page 38.

<sup>46</sup> Qwest GT&C Brief at pages 3 to 6.

AT&T's proposed SGAT section would introduce substantial uncertainty over the applicability of those standards and those methods. AT&T indicated that comparability to other SGAT offerings should be the primary focus of disputes about terms and conditions for products or services added to the SGAT. Such comparability would, at best, be a secondary evidentiary indicator of compliance with statutory and regulatory standards; never should it replace those standards as the test for resolving disputes. Moreover, there is no reason on this record to support any conclusion that the existing methods by which disputes over the terms and conditions of SGAT offerings should be altered.

Therefore, changing the SGAT as recommended by AT&T would introduce uncertainty and complexity in a type of situation that is already adequately addressed by the SGAT.

## 2. Limiting Durations on Picked and Chosen Provisions

AT&T argued that it was improper for Qwest to limit CLEC access to provisions selected from other CLEC agreements to the termination date of the agreement from which the provisions were selected. AT&T argued that the FCC has set three conditions that Qwest may apply to limit CLEC "pick and choose" rights, none of which supports this limitation. AT&T argued that the three cases where Qwest is allowed to offer terms and conditions other than what the original CLEC acquired are: (a) where the service would cost more than it does to serve the carrier under the other agreement, (b) where it is technically infeasible to provide the service to the opting-in carrier; or (c) where the particular contract has been available for an unreasonable amount of time after its approval.<sup>47</sup>

Qwest responded that adopting AT&T's argument would allow CLECs, in succession, to indefinitely extend the duration of opted into provisions. For example, assume that CLEC A had an agreement with 6 months left and that CLEC B had an agreement with 2 years left. Under the AT&T approach, CLEC B could opt into a provision that would still be in effect when CLEC A's agreement expired. CLEC A could then enter a new agreement with a term extending past CLEC B's agreement term, and could opt into the same term. The CLECs could then, with overlapping terms indefinitely extend particular provisions of an increasingly dated interconnection agreement. Qwest also cited dicta from a case that the FCC decided on other grounds:<sup>48</sup>

*[i]n such circumstances, the carrier opting-into an existing agreement takes all the terms and conditions of that agreement (or portions of the agreement), including its original expiration date.*

**Proposed Issue Resolution:** There needs to be an appropriate means for changing over time the terms and conditions under which Qwest provides service to CLECs. As the FCC has recognized in the provisions cited by AT&T, both costs and technical feasibility will change as time passes. However, AT&T's proposal would provide a major barrier to reflecting such change, particularly as it relates to costs. It would allow leapfrogging pick and choose decisions that could perpetuate prices long after the costs underlying

<sup>47</sup> AT&T General Terms and Conditions Brief at page 8, citing 47 C.F.R. § 51.809(b) & (c).

<sup>48</sup> Qwest General Terms and Conditions Brief at page 9, citing *In re Global NAPs, Inc.*, CC Docket No. 99-154, FCC 99-199 (released Aug. 3, 1999).

them have changed. The provision cited by AT&T would only prevent opting in when the costs of serving the opting, or second, CLEC were different from those of the first CLEC. It would not allow relief where the costs of serving both rise to the point that makes the available price non-compensatory. In this respect, it is unreasonable.

Moreover, it is clear that opting in neither does, nor should, allow a CLEC to avoid the other terms and conditions that can be said to relate closely to the provision being elected. The duration or term of an agreement operates as a fundamental limit on all of the rights and obligations (absent explicit exceptions) that a contract creates.

Absent compelling circumstances (AT&T showed none here; it was arguing for a generally applicable rule), it should be concluded that the duration of the agreement from which the provision is being picked or chosen forms an integral part of any substantive provision that a CLEC seeks to use. Under this rule, a CLEC could take the provision from the agreement with the longest remaining duration, if it considered duration to be of primary importance. Where it did so, it would not be extending the duration of any commitment Qwest was already willing or obligated to accept. There should, however, be no right, in the case of picking and choosing, to require Qwest to make an offering at a time beyond that for which it is already obligated. If a CLEC wants to do that, it should employ the Acts negotiation and arbitration procedures.

### 3. Applying "Legitimately Related" Terms Under Pick and Choose

AT&T commented that Qwest had abused the "legitimately related" requirement by requiring adherence to other, peripheral SGAT requirements. AT&T cited a Qwest requirement (from a state that was not identified) that AT&T accept forecasting provisions before it could take advantage of a provision allowing access to trunk blocking reports. AT&T also cited a Wyoming instance where Qwest required AT&T, before opting into a single point-of-interconnection provision to accept other (unidentified) unrelated provisions.<sup>49</sup> AT&T argued that these cases demonstrate a general failure to comply with the Act's section 252(i) requirement that an incumbent not require, as a condition of opting into another agreement, adherence to terms and conditions not related to interconnection, services, or elements being requested.<sup>50</sup>

Qwest responded to AT&T's concerns by adding SGAT Section 1.8.2 language, which would provide that:<sup>51</sup>

*In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical or other considerations.*

Qwest also proposed to add the following language to SGAT Section 4.0:

*"Legitimately Related" terms and conditions are those rates, terms and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those that specifically relate to other interconnection, services or elements*

<sup>49</sup> AT&T's Initial Comments on General Terms and Conditions (AT&T GT&C Comments), at page 15.

<sup>50</sup> AT&T GT&C Brief at page 9.

<sup>51</sup> Qwest GT&C Brief at pages 10 and 11.

*in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service or element. These terms and conditions would not include General Terms and Conditions to the extent that the CLEC Interconnection Agreement already contains the requisite General Terms and Conditions.*

Qwest also noted that the already existing language of SGAT 1.8.1 placed on Qwest the burden of demonstrating that any provision it sought to include was in fact legitimately related.

**Proposed Issue Resolution:** When combined with the placing of the burden on Qwest to demonstrate a legitimate relationship, the new Section 1.8.1 and 4.0 provisions adequately limit Qwest's rights to attach other provisions to those that a CLEC might pick and choose. They go as far as can be expected to address what will often have to be case-by-case decisions about what other terms should go along with those that a CLEC chooses. The changes establish a proper foundation for resolving disputes, which is sufficient. AT&T's evidence did not show a firm pattern of unreasonable conduct in the participating states; therefore, it is appropriate to conclude that Qwest's past conduct does not require more than what these changes already accomplish.

#### **4. Successive Opting Into Other Agreements**

AT&T argued that Qwest does not allow a CLEC (call it "CLEC 3") to opt into an agreement that itself is an agreement reached by a CLEC (call it "CLEC 2") that made that agreement by opting into an agreement with yet another CLEC (call it "CLEC 1"). Rather, AT&T said, Qwest requires that CLEC 3 opt into the agreement of CLEC 1, not into the agreement that CLEC 2 secured by opting into the agreement of CLEC 1.<sup>52</sup> Qwest's brief did not respond to this issue.

**Proposed Issue Resolution:** Once a CLEC has opted into an agreement of another, that opting CLEC's agreement has its own status as an interconnection agreement. It thus should acquire the ability to be "opted into" by yet another CLEC. There is not a sound reason, particularly given the recommendation above not to extend the duration of provisions opted into, for denying other CLECs the ability that AT&T seeks. It must be recognized, however, that if all other terms and conditions remain the same, and are not extended by the first opting in decision, that there should generally not be a material difference between the Qwest and the AT&T approach. The one possible difference that could apply is where Qwest agrees at the first opting to extend the term of the first agreement. However, that case provides a good example of why Qwest should allow the next CLEC to opt into the extended agreement. Otherwise that next CLEC would be denied an offering that Qwest has already agreed to make available. Therefore, the SGAT should contain a provision stating that:

*Nothing in this SGAT shall preclude a CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such*

<sup>52</sup> AT&T GT&C Brief at page 10.

*provision or agreement itself resulted from an opting in by a CLEC that is a party to it.*

### 5. Conflicts Between the SGAT and Other Documents

AT&T argued that tariff filings should not have the effect of automatically amending any interconnection agreement or the SGAT. AT&T said that, tariffs were generally subject to change at the sole discretion of Qwest.<sup>53</sup> XO more broadly argued that Qwest should be prohibited, upon a complaint by a CLEC, from imposing the terms of any other document (citing tariffs, methods and procedures, technical publications, policies, product notifications, or other Qwest documents) outside the SGAT unless and until Qwest should prevail under the SGAT's dispute resolution procedures.<sup>54</sup>

Qwest first said that a later commission decision specifically overriding the SGAT should prevail. It then agreed to adopt language that would eliminate "conflicts" as the basis for deciding when there was incompatibility between the SGAT and other documents. The language of the frozen SGAT instead makes it clear that the SGAT prevails over other documents that abridge or expand the rights or obligations of each party to the SGAT.<sup>55</sup>

**Proposed Issue Resolution:** The first part of this issue is AT&T's tariff conflicts concern. Likely conflicts between the SGAT and tariffs consist of two principal types: (a) the SGAT makes a tariff provision applicable for some SGAT purpose and the tariff later changes from the version in existence at the time of the SGAT's adoption, and (b) there is no such SGAT reference, but a tariff provision that becomes effective after the SGAT did contains terms that conflict with those of the SGAT. In the first case, Qwest's frozen SGAT language contains a Section 2.1 statement that:

*any reference to any statute, regulation, rule or Tariff applies to such statute, regulation, rule or Tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).*

This provision resolves the first type of conflict by providing that the most recent tariff provision applies. This resolution is appropriate, given that there was agreement in the first place to subject an aspect of the Qwest/CLEC contractual relationship to tariffs, which are changeable by their nature. Had there been intent to freeze the tariff provisions to those existing at the time of SGAT adoption, the words of the tariff, then existing rather than a mere reference to it, could have been used. Moreover, opting in opportunities would become confusing to administer in the event that the tariff provision in effect at the date each CLEC began to use the SGAT would apply to that CLEC.

Finally, CLECs generally have the ability to participate in tariff proceedings that affect them. Thus they have the power to ask commissions to impose limits on the effectiveness of new or changed tariff provisions (for SGAT or Interconnection Agreement purposes), should CLECs consider them appropriate. It does not demand too much of CLECs

<sup>53</sup> AT&T GT&C Brief at page 11.

<sup>54</sup> Brief of XO Utah on General Terms and Conditions (XO GT&C Brief), at page 4.

<sup>55</sup> Qwest GT&C Brief at pages 15 and 16.

providing local exchange service in a state to maintain a reasonable level of diligence regarding Qwest tariff provisions that they know are included in their SGATS or Interconnection Agreements.

The second type of conflict is also addressed in the SGAT Section 2.3:

*Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.*

This provision clearly prohibits the application of any new tariff provision, unless a public service commission decrees otherwise, that would conflict with the SGAT directly, or would abridge or expand any party's rights or obligations under the SGAT, even if there were not direct conflict. This provision provides sufficient protection against subsequent changes in tariffs. The only possibility left open is one that should be left open; i.e., an explicit decision by a commission that a new or changed tariff provision for some reason should affect the SGAT. It would be inappropriate to take from commissions the right to consider such issues efficiently at the time that Qwest tariffs are before them. Moreover, the Qwest language also precludes changing the SGAT by allowing a tariff to go into effect by operation of law (there would be no required "specific determination" by the commission in that case). Therefore, the concern raised by AT&T is already satisfied; going further would unduly restrict the ability of public service commissions to consider at convenient times and in efficient manners the relationship between tariffs and the SGAT.

The second part of the issue is XO's broader concern about the proper method for assuring that other kinds of documents do not override SGAT provisions. The Qwest language about expansion or constriction of rights and obligations establishes a sound general rule. What remains in issue is whose view should prevail while the SGAT dispute resolution methods take their course. XO's language arises from a concern that Qwest's position about inconsistencies (i.e., that there are none) will prevail pending resolution of disputes. XO would solve the problem by making the CLEC's provision prevail in that case.

The problem with XO's approach is that it does not take into account the great practical difficulties that would arise in the operation of Qwest's business if but a CLEC complaint could prevent Qwest from applying the business and operations rules that the documents at issue will contain. The Congress, the FCC, and the participating states all expect that Qwest will act promptly and effectively to meet requirements across the spectrum of activities that it takes to provide local exchange service, whether directly to end users or at wholesale to CLECs who are making use of Qwest's network. It is simply not realistic to instantly negate the substantial guidance, procedures, operational requirements, and methods that make a company like Qwest able to serve CLECs in this fashion.



There will almost certainly be cases where Qwest documentation abridges or expands SGAT rights or responsibilities. However, the problem we have to solve is determining who, pending dispute resolution, ought to be able to define how needed activities, processes, procedures, methods, and the like need to progress in that interim period. Quite simply, it ought to be the one obliged to provide service who retains the right to decide what it takes to provide that service while such disputes remain pending. XO's recommended approach would remove from Qwest too important a control that a service provider should have to define and manage the processes by which it provides services. However, lest the degree of this authority be misinterpreted, it should remain clear that an outside resolver of disputes should have the power to decide finally, and should be expected to decide with dispatch, whether other and, by definition, subsidiary Qwest operational and business practice documents abridge or expand the rights and obligations imposed by the SGAT. To best implement this approach, the SGAT should, as it does, remain silent on the question of whose interpretation of consistency as here defined prevails while disputes remain in the process of resolution.

#### 6. Implementing Changes in Legal Requirements

AT&T objected to what it termed Qwest's desire to change SGAT provisions to conform to changes in law as soon as the decisions making those changes (e.g., a court decision) become effective. AT&T argued that such an approach unduly favors Qwest. It is generally easy to stop offering something almost immediately after a ruling that ends an obligation to provide it. However, it takes time to develop a product or service offering after a ruling that first creates an obligation to provide it. AT&T recommended that the SGAT instead provide for a period of time for parties either to: (a) mutually agree to change their agreement after a ruling, or (b) resolve disagreements about the change through the SGAT dispute resolution procedures. AT&T said that this approach would create more balance in the transition needed upon a change in law, and that it would better comport with the impairment of contracts provision of Article 1, Section 10 of the United States Constitution.<sup>56</sup>

In response to concerns raised in the workshops, Qwest revised SGAT Section 2.2 to allow a 60-day status-quo maintenance period to allow negotiation of disagreements about whether a change in law (which Qwest broadened to include and "Existing Rules") would require a change in the SGAT. After that period, the SGAT dispute resolution provisions would apply, with allowance for creating an interim operating arrangement pending completion of the procedures called for by those provisions. Qwest's language would make the eventual resolution of the dispute effective back to the effective date of the change in the existing rules. Qwest said that such a "true-up" mechanism was necessary to take away any incentive to extend the time taken to resolve disputes.<sup>57</sup>

**Proposed Issue Resolution:** In the first instance, the impairment of contract provision has no applicability here. The issue is what the contract (i.e., SGAT) should say in the first place, not how to interpret it after the fact of its execution. If and as that contract allows for changes due to changes in applicable legal requirements, there is no colorable

<sup>56</sup> AT&T GT&C Brief at pages 12 and 13.

<sup>57</sup> Qwest GT&C Brief at pages 12 and 13.

constitutional claim. Nevertheless, it is necessary to provide for a reasonable period for the determination of what changes to the SGAT are appropriate in such cases, and for the determination of how any changes should be implemented. Qwest's new SGAT language, which arose in response to concerns we also raised at the workshops, provides for a reasonable means for accomplishing the needs at hand. The modifications that these provisions make to the SGAT's generally applicable dispute resolution procedures are appropriate to the need for particularly prompt action to address changes in those legal requirements that are fundamental premises underlying the SGAT. Qwest's so-called "true-up" mechanism is also appropriate, because it allows an outside dispute resolver to temper any resolution, if deemed appropriate.

The Qwest language changes accomplish the purposes that underlie AT&T's objections to the old SGAT language. Moreover, these amendments do so in a way that will promote the reasonably prompt adjustments that should accompany changes in legal requirements. If Qwest includes that language in the SGAT, it will adequately protect CLECs in the event that changes to the SGAT become necessary as a result of such outside factors.

#### **7. Second-Party Liability Limitations**

AT&T objected to the scope of Qwest's SGAT Section 5.8 agreement to bear liability, arguing that the scope was too narrow either to compensate CLECs for damages, or to provide an adequate incentive for Qwest to provide good service after it receives Section 271 approval. AT&T requested a number of specific changes to the language of Qwest's frozen SGAT.<sup>58</sup>

- Section 5.8.1: Address the parties' liability for damages assessed by a public service commission (addressed in the next succeeding issue)
- Section 5.8.2: Change Qwest's language addressing the inter-relationship between these general damages provisions and the Qwest post-entry assurance plan (PAP or QPAP)
- Section 5.8.3: Removing Qwest's provision limiting damages to the amount that would have been paid for services under the SGAT
- Section 5.8.4: Allowing consequential damages for gross negligence (Qwest limited it to willful conduct) and for bodily injury, death, or damage to tangible property caused by negligence
- Section 5.8.6: Expanding Qwest's liability for fraud by CLEC customers to any applicable theory of liability (Qwest limited it to its own intentional conduct).

Qwest responded by saying that its Section 5.8.2 language adequately addressed the PAP concern, that the expansion of liability in Section 5.8.4 was not consistent with industry practice, and that the AT&T changes to Section 5.8.6 would also unduly expand Qwest's liability.<sup>59</sup>

<sup>58</sup> AT&T GT&C Comments at pages 33 through 35, and AT&T GT&C Brief at pages 14 through 17.

<sup>59</sup> Qwest's GT&C Brief at pages 20 through 22.

**Proposed Issue Resolution:** The parties generally agreed that the SGAT should rule out indirect, incidental, and consequential damages. This agreement is consistent with general commercial practice and, more particularly, with the provisions of telecommunications tariffs. One of the purposes of such limitations is to limit the exposure of a service provider to reasonably foreseeable and insurable risks. Indirect, incidental, and consequential damages tend to be less predictable and more plaintiff-specific.

Having generally agreed to this standard, much of the dispute between the parties amounts to the identification of appropriate carve-outs to the general rule limiting damages to direct ones. One exception is the AT&T Section 5.8.2 change regarding the PAP. The degree to which the provisions here will overlap with the PAP and the question of what to do about that overlap cannot be meaningfully addressed without considering the matters being addressed in connection with the PAP. Therefore, it is necessary to defer consideration of this issue until the forthcoming report that will address the PAP.

Returning to the other disagreements, the general rule that should be followed is that predictable and readily insurable risks should generally lie with the party whose conduct creates those risks. Moreover, insurance against those risks should be considered a reasonable cost of doing business.<sup>60</sup> With that general rule in mind, we approach the remaining AT&T arguments about the SGAT's liability provisions; i.e., 5.8.3, 5.8.4, and 5.8.6.

With respect to 5.8.3, the language in AT&T's brief notes Qwest's deletion of Section 5.8.3, which removed the general limitation on damages to payments for services. However, Qwest's frozen SGAT moved it to Section 5.8.2; it reappears nowhere in the language set forth in AT&T's brief. The provision should remain as Qwest has proposed it in the frozen SGAT. Otherwise, Qwest's exposure to damages becomes extended beyond the point that is reasonable in light of general commercial and telecommunications tariff experience.

With respect to Section 5.8.4, AT&T's language first combines notions of liability to second-parties (i.e., the parties to the SGAT) and third parties (e.g., CLEC customers or members of the public). This combination is not appropriate to the structure of the SGAT, which treats second-party liability in Section 5.8 and third-party liability in Section 5.9 (the indemnification section). Thus, no change to Section 5.8.4 should provide for liability other than by Qwest to CLECs and by CLECs to Qwest. That said, bodily injury and death are not appropriate subjects to treat at all in Section 5.8.4, because they concern third-party liability in a contract between two corporations.

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<sup>60</sup> What this last point means here is that, to the extent that Qwest's liability is expanded beyond what it proposed in the SGAT, it should be able to recover through its prices to CLECs the reasonable costs of insuring against such liabilities, whether such insurance come from be by a third-party carrier or through self insurance. No large, complex business is perfect; from an economic perspective, the reasonable costs of insuring against ones own errors or omissions is a cost of doing business that one can expect to recover in an efficient market. Certainly, insurance premiums, even for liability, are traditionally considered appropriate for recovery.

After these exclusions concerning the AT&T Section 5.8.4 language, the next matter of concern becomes responsibility for damage to tangible property. It is not appropriate for Qwest to exclude liability for damage to the tangible property of one party to the SGAT, where that damage results from acts or omissions by the other party. It would be hard to imagine Qwest or AT&T disclaiming responsibility for physical damage to a customer's home if they were to cause it during a service call. Moreover, it would contravene public policy to diminish (by removing consequence) Qwest or CLEC incentives to act with due care where their activities place the property of others in harm's way. The same is true if the property is not of a customer, but is that of the other party to the SGAT. Both Qwest and CLECs will come into contact with very valuable property of the other in their relationship. It would be simply nonsensical to have those contacts take place with the knowledge that their actions need not pay due respect to the property of the other. Moreover, the risk of second-party property damage is a reasonably predictable and insurable one. The party creating it should insure against the risk. Therefore, the SGAT should contain a provision that provides as follows:

*5.8.4 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors or employees.*

This language change also alters two other aspects of AT&T's proposal. First, it does not adopt gross negligence as a standard under item (i), but limits liability to willful or intentional conduct. The reason is that gross negligence is often an elusive thing to prove. There is precedent and good cause for leaving it out of commercial contracts. Second, unlike AT&T's proposal, the above language imposes liability only where the damage to the tangible property of an SGAT party arises from the sole negligence of the other. Because the harmed party has insurance opportunities as well, it is appropriate to make it bear the risk where its own actions materially contribute to loss, even in cases where the other party is at fault as well.

With respect to AT&T's proposed change to Section 5.8.6, we should begin from the premise that fraud by end-user customers or by those using customer services should be the primary responsibility of the carrier who provides, vis-à-vis the end user, the service used to perpetrate the fraud. Therefore, the CLEC should always bear responsibility for fraud in cases where its own acts or omissions materially contributed to its perpetration. AT&T's proposed language applies a much looser standard. First, it makes its own contribution to the fraud irrelevant, providing, it would appear, that Qwest is responsible even if its acts or omissions were not the sole cause of the ability to perpetrate the fraud. AT&T's language would be appropriate, however, if it applied to cases where Qwest was the only party whose acts or omissions contributed. Therefore, SGAT Section 5.8.6, as proposed in Qwest's frozen SGAT, should be changed to read as follows:

*5.8.6 CLEC is liable for all fraud associated with service to its customers. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless: (a) such fraud is the result of any act or omission by Qwest, and (b) the ability to perpetrate*

*such fraud was not contributed to by an act or omission by CLEC. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's customers, Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.*

### 8. Third-Party Indemnification

AT&T argued that the SGAT's Section 5.9 indemnity provisions must complement the Section 5.8 liability-limitation provisions and the PAP to provide an adequate incentive for Qwest, as a monopolist, to avoid anti-competitive and discriminatory conduct. AT&T expressed concern about SGAT language (in Section 5.9.1.2) that would limit Qwest responsibility for damages CLECs must pay to their end users. AT&T argued that the SGAT's indemnity provisions should "more closely mirror those found in competitive markets between willing buyers and sellers."<sup>61</sup> AT&T offered language (in Exhibit B of its brief) that would accomplish its purpose.

Qwest responded that its indemnity language did reflect a market-based approach. Qwest also noted that making a wholesale supplier broadly responsible for claims by the wholesale customer's end users would discourage the wholesale customer from imposing reasonable limits on its liability to its end users, because it could simply transfer those liabilities back to its wholesale service provider.<sup>62</sup> In the specific context of claims by CLEC end users, Qwest said that CLECs should not be encouraged to offer their end users an especially generous acceptance of liability, merely because they could transfer that liability back to Qwest and thereby gain a competitive advantage (since Qwest would presumably not be able to pass to someone else its own costs resulting from such generosity).<sup>63</sup> Qwest's proposed SGAT Section 5.9.1.2 would protect itself by requiring the CLEC to indemnify Qwest for any damages sought by the CLEC's end user.

**Proposed Issue Resolution:** AT&T sought a market-based approach, but did not provide evidence to demonstrate what a typical wholesaler/retailer agreement (particularly where the wholesaler also acts as a retailer in competition with its wholesale customer, which is not an unknown concept) would provide in analogous circumstances. However, we can, from the record here work to a reasonable approximation of market conditions by starting at the end of the value chain, which here is the relationship between the CLEC and its end user. The evidence shows that typical custom is to impose significant limits on customer compensation in the event of failure to deliver service.

One would expect in a competitive market that a wholesale supplier would: (a) provide service in accord with reasonable expectations and customs prevailing in the retail portion of the market, and (b) charge, in any case, premium prices for added services requested by its wholesale customer. Thus, if a wholesale purchaser wanted to provide added services to its retail customers, it should expect its wholesale seller to charge it for any special requests that impose more costs.

<sup>61</sup> AT&T GT&C Brief at pages 18 and 19.

<sup>62</sup> Qwest GT&C Brief at pages 22 and 23.

<sup>63</sup> Qwest GT&C Brief at page 25.

It can be taken as a virtual certainty that Qwest's prices for wholesale service to CLECs do not include the costs that it would incur if it had to bear the costs involved were a CLEC to provide better than usual damage limitations in the CLECs agreement to serve an end user. Therefore, a competitive market analogy would strongly indicate that AT&T's request to transfer to Qwest the cost of relatively liberal damage responsibilities, vis-à-vis the CLEC's end users, is not appropriate.<sup>64</sup>

In addition to asking for a competitive market analogy, AT&T also argued that Qwest needs incentives to counteract the natural tendencies that a monopolist wholesaler has to deny good service to those who seek to take from it a share of its own end users. There is no fallacy in this argument's roots. However, the correct incentive is not to encourage CLECs to provide their end users with more than usually liberal damage provisions at Qwest's expense. As Qwest's incentives as a monopolist are questioned, so should we question the motives that would be created if CLECs were free to provide whatever benefits they chose for their end users, in the knowledge that, however high the cost of doing so, Qwest would have to pay them. The better course is to address the incentives issue in the context of the PAP, leaving us here to decide only the question of damage recovery. In that context, the record demonstrates that Qwest's SGAT provisions concerning indemnity, insofar as it involves CLEC end users, better reflect the competitive-market mirroring test that AT&T proposed.

There is, however, a separate concern about Qwest's Section 5.9.1.2 language. The Qwest indemnification language exempts itself not just from liberal lost-service compensation mechanisms that CLECs might wish to employ at its expense. The provision is written so broadly as to indemnify Qwest also in cases where its negligence causes bodily injury to CLEC customers or physical injury to their tangible property. It is proper to expect that Qwest will retain responsibility for its acts or omissions that cause such injury, on reasoning similar to that which applies to lost-service compensation.

A CLEC that wishes to offer liberal service-interruption benefits should bear their costs; the reason is that such a rule makes the causer of costs responsible for incurring them. Where Qwest's employees, contractors, agents, or representatives tortiously cause physical harm to CLEC customers or their property (during a service call, to repeat the example used in the discussion of the prior issue), Qwest should be responsible, again to align cause and effect. This is not a case where a CLEC is extending a benefit of value, while transferring the cost to someone else. Instead, the issue here is to preclude Qwest from transferring to someone else the consequences of its actions that cause physical injury. Therefore, SGAT Section 5.9.1.2 should include, as follows, a new sentence at its end:

*The obligation to indemnify with respect to claims of the Indemnified Party's end users shall not extend to any claims for physical bodily injury*

<sup>64</sup> The XO GT&C Brief, at page 7, argues that the existence of the customer remedies in the CLEC's tariff should remove concerns about the lack of CLEC concerns to limit them. That factor certainly will tend to limit the extent to which CLECs will go in their arrangements with customers, because CLECs will have to bear the costs in the absence of Qwest fault for the underlying service problems. However, to the extent that we create a system where CLECs will have the opportunity to transfer a portion of the costs of their offerings to customers, not only away from themselves, but also to Qwest, a non-economic incentive will remain.

*or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnifying Party.*

#### **9. Responsibility for Retail Service Quality Assessments Against CLECs**

XO argued that Qwest should bear responsibility for assessments or fines levied against a CLEC that fails to meet a state commission's retail performance standards because of a failure by Qwest to provide the CLEC with SGAT-compliant service.<sup>65</sup>

**Proposed Issue Resolution:** The XO request establishes an immutable rule about who should ultimately be responsible for state-commission imposed assessments for violating retail service requirements. The problem with this approach is that it may not be consistent with each state's policy regarding such assessments. For example, a commission could legitimately seek to penalize a CLEC whose failure to demand proper performance from its wholesale supplier (or perhaps even to be watchful enough to know that its end users were getting poor service due to the actions of Qwest as a vendor) contributed to the poor service that the commission may find cause to penalize. The fact that the vendor in this case is a competitor with a monopoly to protect may mitigate the usual prudence rule that requires a utility to manage its suppliers effectively, but it by no means should be read to obviate that important customer-protection rule ab initio.

The superior way to deal with CLEC concerns about such "vicarious" liability is for them to make arguments in proceedings that either establish such standards and assessments in the first place, or in cases that are opened to enforce them. This approach, as opposed to the inclusion of XO's language in the SGAT, is better designed to give commissions the ability to impose their view of what customer-protection demands in their individual jurisdictions.

#### **10. Intellectual Property**

There were disagreements at the workshop about SGAT Section 5.10, which deals with intellectual property. AT&T represented that agreement had been reached on a revised Section 5.10, the terms of which AT&T included in Exhibit C of its brief. AT&T said that this issue could be considered resolved, in the event that Qwest continued to agree to the Exhibit C language.<sup>66</sup> Qwest did not brief this issue, but its frozen SGAT contained language identical to that of AT&T, except as to several particulars.

**Proposed Issue Resolution:** There is no way from the record to verify that the differences between AT&T brief Exhibit C and frozen SGAT Section 5.10 are material to AT&T. It should, however, be presumed that this issue is closed, in the absence of

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<sup>65</sup> XO GT&C Brief at pages 6 through 8. XO's argument would also obligate Qwest to make a CLEC whole for any payments it made to its customers for poor service, when Qwest caused it. That argument should fail for the same reasons set forth in the discussion of the immediately preceding issue.

<sup>66</sup> AT&T GT&C Brief at page 22.

comments to the contrary within the 10-day period established for filing comments on this report with the individual participating commissions.

#### 11. Continuing SGAT Validity After the Sale of Exchanges

AT&T proposed a series of provisions that would apply upon the sale by Qwest of exchanges that include end users whom CLECs serve through services acquired under the SGAT. AT&T proposed the following language for SGAT Section 5.12.2.<sup>67</sup>

- a. Requiring the written agreement of Qwest's transferee to be bound by the SGAT terms and conditions until a new agreement between the transferee and CLEC becomes effective
- b. Providing notice of the transfer to CLECs at least 180 days prior to completion (AT&T agreed in its brief to less notice if 180-day notice could not be provided)
- c. Obligating Qwest to use best efforts to facilitate discussions between the transferee and CLECs with respect to SGAT continuation
- d. Serve a copy of the transfer application on CLECs
- e. Denying Qwest the ability to contest CLEC participation in the transfer approval proceedings or to challenge the Commission's authority to consider obliging the transferee to assume the SGAT obligations.

Qwest agreed to providing notice (item b above) and to facilitating discussions (item c above). Qwest objected to the remainder, on the grounds that those conditions would unreasonably "devalue" Qwest's assets by placing burdensome obligations on it or on transferees. Qwest cited as an example the burden that a PAP with substantial penalty obligations would be on a much smaller company that might be interested in purchasing some Qwest exchanges.

**Proposed Issue Resolution:** There should be no section 271 induced prohibition on the disposition by Qwest of its assets and no participant has proposed otherwise. On the other hand, there should be a reasonable transition period when exchanges contain CLEC end users (where service to them comes through facilities that CLECs secure under the SGAT). It would not serve the public interest to force customers to make changes too hastily. Qwest appears to accept this notion; it did not contest the need for it to provide notice of exchange transfers and to work with the transferee and CLECs to promote an effective transition.

The basic interests that clearly need to be protected are the following: (a) end user transitions to new suppliers should the new transferee not be willing to provide service on terms that a CLEC, or in turn its end users, can accept, (b) a reasonable CLEC opportunity to negotiate with the transferee, and (c) an opportunity for the commission to consider the application of any regulatory authority it may have to condition the transfer on commitments respecting continuation in whole or in part of the SGAT, with the transferee stepping into the shoes of Qwest.

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<sup>67</sup> AT&T GT&C Brief at pages 20 and 21.



AT&T's proposal in effect goes beyond these needs in two critical respects: (a) it would give CLECs what amounts to an option to continue the SGAT to its scheduled duration, with the transferee accepting all of its obligations, and (b) it strives to preclude debate about the authority of commissions to consider the kinds of conditions noted in the third need area listed in the preceding paragraph. These two aspects of AT&T's proposal are inappropriate for inclusion in the SGAT.

The continuation option would exist because a CLEC could, to the extent it preferred the existing SGAT, merely choose not to execute a new agreement with the transferee. That unilateral act alone, under AT&T's language, would extend the SGAT at least until the termination date it contains. Such a possibility would have at least some support, if it were clear that the obligations of the transferee under the Act were the same as those applicable to Qwest. However, that has not been shown to be true and Qwest has provided at least one example of a case (the economic exposure under a PAP) where there would likely be a very different set of both requirements and expectations about what to anticipate from the transferee.

Because requirements applicable to Qwest and the transferee may well differ, CLECs should not have the unilateral right to continue the SGAT indefinitely. However, they should have a reasonable opportunity either to negotiate with the transferee or to seek relief from the commission in the event that negotiations are not sufficient. This need can be served by a minimum notice period, similar but not identical to what AT&T has proposed in its brief. That notice period is discussed below. Therefore, clause A of AT&T's proposed language should not be included in the SGAT.

Qwest should, however, provide notice of the transfer sufficiently in advance of its proposed effective date to permit the end-user transitions, transferee/CLEC negotiations, and CLEC requests to commissions discussed earlier. Given the nature of such transactions and the likely time requirements of commission approvals in the states where they apply, it would be sufficient and appropriate to include a new sub-paragraph of the SGAT's assignment clause (Section 5.12) as follows:

*5.12.2 In the event that Qwest transfers to any unaffiliated party exchanges including end users that a CLEC serves in whole or in part through facilities or services provided by Qwest under this SGAT, the transferee shall be deemed a successor to Qwest's responsibilities hereunder for a period of 90 days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest shall use its best efforts to facilitate discussions between CLEC and the Transferee with respect to Transferee's assumption of Qwest's obligations pursuant to the terms of this Agreement.*

This provision gives Qwest the option of providing notice more than 60 days ahead of time or of having the transferee accept responsibility for a limited period of time should it decide not to do so. The provision also provides notice to a transferee that the

commission may impose SGAT transition requirements, provided that it already has the power to do so (i.e., the SGAT will not confer any such power, nor, if there is no such power, will the SGAT effectuate a continuation of the SGAT for more than the prescribed period). This clause excludes AT&T's no-contest clauses related to intervention or jurisdiction to condition transfers. Commissions are creatures of statute; their jurisdiction cannot be expanded by agreement. Moreover, commissions are competent to determine the public interest involved in requests for intervention; their decisions should be informed by what all parties in interest have to say on the relevant considerations.

This leaves the question of serving applications. It is unnecessarily burdensome to require Qwest to determine which of the more than 100 CLECs serving in its territory have end users in the exchanges involved or to send each a lengthy application. It is sufficient for Qwest, should it choose, merely to inform all CLECs of the pendency of a transfer of identified facilities. CLECs may then determine for themselves their interest in the transfer and seek intervention as appropriate.

## **12. Misuse of Competitive Information**

AT&T provided evidence that it said showed an abuse of Qwest's obligation not to disclose information to its marketing and sales personnel. Specifically, AT&T provided evidence that Qwest contacted a Minnesota end user to secure a rescission of the customer's election to transfer to AT&T, between the time that AT&T submitted the necessary LSR and the time that the transfer was to take place. AT&T took the position that Qwest's marketing and sales personnel must have learned of the switch through the LSR, which means that Qwest can similarly misuse information throughout its region, because it employs a system-wide OSS.<sup>68</sup> AT&T said that Qwest should not be deemed to comply with the requirements of Section 271 until it "demonstrates that it has corrected every mechanism through which Qwest's retail marketing personnel gain access to CLEC confidential customer information". Qwest did not brief this issue.

**Proposed Issue Resolution:** Abuse of information that Qwest gains through the ordering systems that CLECs use to secure facilities or services that will deprive Qwest of existing end users is a very serious matter. For competition to succeed, there must be a high level of confidence that Qwest will limit its use of such systems to serve CLECs, not to gain competitive advantage over them. Certainly, CLECs have no fully comparable method for learning of other carrier efforts (including those of Qwest) that will do them competitive injury.

The problem on this record becomes one of deciding what to make of the single incident cited by AT&T. It did not describe the kind of effort it undertook to uncover incidents of this type. Such a description would have helped to decide whether this case was symptomatic or isolated. There are surely circumstances where Qwest may learn of CLEC attempts to win its end users by means other than illicit access to LSR information. Qwest serves millions of access lines throughout its region. It would not be surprising for a telemarketer selling new services to Qwest end users to encounter by chance a household member who says that there has just been a decision to switch to another

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<sup>68</sup> AT&T GT&C Brief at page 23.

carrier. Given these possibilities, citing a single incident (although AT&T does correctly observe that the state involved is not per se material) does not support a broad conclusion that Qwest's performance fails in meeting Section 271 requirements, or that there exists a need for imposing a potentially very substantial remedial plan.

However, the record does not allow a determination of whether Qwest takes reasonable steps to: (a) minimize the possibility of, (b) discourage, (c) detect, or (d) punish inappropriate conduct. Moreover, Qwest said at the workshop that it did not know whether its customer service representatives could determine from customer account screens whether a CLEC had recently issued through the OSS interface an order affecting that account.<sup>69</sup> Given the importance of this issue, therefore, Qwest should submit a report to the commissions within 30 days detailing its programmatic efforts addressing all four of these key steps in assuring that reasonable steps are taken to control the use of sensitive information. This report should be designed to allow the commissions to make a finding that Qwest has in place a reasonable and comprehensive program for assuring that the possibility for inappropriate use of information received through its GUI and EDI interfaces with CLECs is appropriately minimized.

### **13. Access of Qwest Personnel to Forecast Data**

XO commented that Qwest's legal personnel should not have free access to aggregated CLEC forecast information to use in regulatory filings. XO considers the information in forecasts to be competitively sensitive. It said that Qwest should seek the information through discovery requests if it considers it important for regulatory purposes. XO concluded that the SGAT should preclude use of CLEC confidential information for any purpose other than that for which it was provided.<sup>70</sup>

AT&T expressed concerns about both the sufficiency of the description of those who can see individual CLEC forecast information (it said it could not determine all those to whom Qwest considered disclosure appropriate) and about the ability of Qwest to make free use of aggregated CLEC forecast information. AT&T argued that Qwest receives only a limited license to use CLEC information, not a more general right to transform it and use it for other purposes.<sup>71</sup>

Qwest responded that the language of SGAT Sections 5.16.9.1 and 5.16.9.1.1 would prohibit the disclosure of both individual and aggregated CLEC forecast data to its marketing, sales, and strategic planning personnel. Qwest also said that the language in question allows access to individual CLEC forecasts only by those Qwest personnel who need to have it for use in responding to the forecasts at issue. The positions that Qwest said this need extends to include wholesale account managers, wholesale LIS and collocation product managers, network and growth planning personnel. Qwest would also allow access by its attorneys when a legal issue arises about a specific forecast.<sup>72</sup>

**Proposed Issue Resolution:** Qwest's language does generally limit individual forecast information to those with a need to use the information to manage Qwest's contractual

<sup>69</sup> June 28, 2001 transcript at page 249.

<sup>70</sup> XO GT&C Brief at pages 2 and 3.

<sup>71</sup> AT&T GT&C Brief at pages 25 through 27.

<sup>72</sup> Qwest GT&C Brief at pages 30 and 31.

relationship with the CLEC who provided it. The list of authorized recipients is appropriately limited. However, the language allowing access by Qwest legal personnel is more open ended than it needs to be. As written, any time that there is any issue regarding the forecast, or access to it presumably, the language applies. That language should be limited to cases where the issue involved is about the quality or timeliness of the forecast in connection with the purposes for which it was submitted. Therefore, the phrase "legal personnel, if a legal issue arises about that forecast" in SGAT Section 5.16.9.1 should be replaced with:

*Qwest's legal personnel in connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which the CLEC provided it to Qwest under this SGAT.*

The other concern expressed about Qwest's language concerns the use of aggregated forecast information. SGAT Section 5.16.9.1.1 allows Qwest to file or use aggregated CLEC data for any regulatory filing or for any other purpose generally related to fulfilling its SGAT obligations. This section is again too open ended. The information involved clearly is highly sensitive and it is not sufficiently comforting merely to, as Qwest has, take precautions when it believes that aggregation will not be sufficient to protect the confidentiality of an individual CLEC's data.

The protection of the information is too important to trust only to such a provision. However, it is recognized that the participating commissions may have legitimate needs for access to such information; those needs should not require the commissions to solicit it from a vast number of individual CLECs. Therefore, Qwest should be permitted to provide the data upon a specific Commission order requiring it, upon the initiation by Qwest of any protective processes applicable in the state requiring it, and upon notice by Qwest to the CLECs involved on a basis that the commission involved determines to be sufficient to permit the completion of any procedures required to continue to protect its confidentiality. The following replacement language for SGAT Section 5.16.9.1.1 will accomplish this purpose:

*5.16.9.1.1 Upon the specific order of the Commission, Qwest may provide the forecast information that CLECs have made available to Qwest under this SGAT, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion.*

Note that this provision, unlike Qwest's language, does not allow Qwest to use aggregated CLEC forecast information for any other purpose whether or not related to fulfilling its responsibilities under the SGAT. Section 5.16.9.1 already makes individual CLEC forecast information available to the specified persons who need to know it to fulfill Qwest's SGAT responsibilities. There is thus no basis for concluding that anyone else within Qwest has a need for aggregate information.

#### 14. Change Management Process

AT&T cited the FCC's SWBT Texas 271 Order as requiring the existence of a change management process that meets five specific criteria.<sup>73</sup> Qwest's relevant change management is called CICMP (Co-Provider Industry Change Management Process). At the workshops, Qwest indicated that it was in the process of making significant changes to CICMP. Therefore, the record in these workshops does not allow for an assessment of Qwest's compliance with the cited FCC standards, which are:

- Clearly organized and readily accessible change management process information
- Substantial CLEC input into the creation and operation of the process
- Existence of a procedure for timely dispute resolution
- Availability of a stable test environment that mirrors production
- Adequacy of documentation available for use in building an electronic gateway

**Proposed Issue Resolution:** The record here does not allow meaningful consideration of the sufficiency of Qwest's CICMP, which forms part of Section 12.2.6 of the SGAT. Therefore, there is not at present a sufficient basis for concluding that Qwest meets applicable requirements in this aspect of its relationship with CLECs.

#### 15. Bona Fide Request Process

AT&T said that the SGAT Section 17 bona fide request process could not be shown to be nondiscriminatory, for two reasons:<sup>74</sup>

- There is no evidence to show that it would apply similarly to the process Qwest uses when its own end users ask for services not already provided for under tariffs
- Qwest fails to provide notice of previously approved BFRs with similar circumstances
- Qwest has no objective standards for standardizing products or services that result from repeat BFR requests.

Qwest noted that it had only received 17 BFR requests since 1999.<sup>75</sup> Qwest also noted that it would not require subsequent BFRs for substantially similar cases, with the burden on Qwest to show that a subsequent request is not substantially similar. SGAT Section 17.12, which incorporates this concept, provides that a CLEC can get substantially similar services without a BFR, but must still pay individual case basis prices until Qwest standardizes the offering reflected in the granted BFR. Qwest will also not require a BFR and will refund the BFR application fee if it has recently denied a similar request.

<sup>73</sup> AT&T GT&C Brief at page 27, citing paragraph 108 of the FCC's order *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Released, June 30, 2000).

<sup>74</sup> AT&T GT&C Brief at pages 30 and 31.

<sup>75</sup> Rebuttal Testimony of Larry B. Brotherson Re: Terms and Conditions and BFR (Brotherson Rebuttal), May 23, 2001, at page 66.

Qwest objected to providing general notice (i.e., other than in the context of the filing of a similar BFR by an individual CLEC) of granted BFRs because a CLEC could object to the providing of public notice about something it developed and requested and in which it therefore has a proprietary or trade secret interest. With respect to standardizing products or services made available through repeat BFRs, Qwest opposed a firm, objective standard, arguing that it should have the discretion to determine when conditions justified standardization.<sup>76</sup>

**Proposed Issue Resolution:** The first aspect of this issue concerns the issue of parity with Qwest end-user requests for non-standard retail services. There is not a sound basis for concluding that this retail process is analogous in purpose or scope to the wholesale BFR process. The latter focuses often and centrally on: (a) the question of technical feasibility, recognizing that federal law in many cases requires an incumbent to provide some form of access on that condition, and (b) the related question of whether access is necessary to give a CLEC a reasonable opportunity to compete. Those are not often, if ever, the same types of standards that will apply to Qwest's analyses of whether to make a non-standard service available to its end users. Moreover, the cost analysis under a wholesale BFR will often differ widely from that applicable to a request for service by an end user, depending on what cost underpinnings, if any, will apply to what can be charged by Qwest for non-standard services at retail.

Therefore, it would be misleading to broadly consider wholesale BFRs comparable with requests by Qwest end users for retail services. Perhaps some subset of retail requests could be considered comparable, but identifying them would be difficult, and would require facts well beyond those on the record here. Moreover, even if such a subset could be defined after the expenditure of great effort, it is not clear that the resulting rule or standard would better protect CLEC interests, as compared with a direct analysis of how well and how promptly Qwest responds to individual BFR requests. Therefore, the parity standard that AT&T suggests here is not appropriate.

The second aspect of this issue concerns notice of previously granted BFRs. In the first place, we must bear in mind that what a BFR seeks is access to Qwest's property. What a CLEC wants to do with that access or how it will advantage it to have such access are not the directly relevant point. What is of immediate concern is what access Qwest will give to its network. It is difficult to see how a CLEC can gain proprietary rights in Qwest facilities. Moreover, it seems less likely that a BFR will come because a CLEC has invented a "better mousetrap." It is far more likely that it will simply be the first to ask for access that, theretofore was not technically feasible, but which since has become feasible. It makes for bad policy to require CLECs to bear the burden of asking Qwest continuously whether technical barriers precluding an important form of access have come down. It is also not appropriate to make CLECs ask informally what progress may have been made on certain offerings before they expend the time and expense to prepare a BFR. It is far better to require Qwest to inform CLECs generally, because Qwest will know as soon as any material change takes place.

CLECs should be required to take the risk that others will learn something about portions of their business that rely upon the same rights of access to Qwest network that others

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<sup>76</sup> Qwest GT&C Brief at pages 34 and 35.

have, when such knowledge comes through information about network access Qwest makes available through the BFR process. When balancing the risks of this exposure against the need for assuring nondiscriminatory treatment of all CLECs, the outcome is clear. CLECs should have prompt notice from Qwest when important technical feasibility barriers have been overcome.

If there is confidential information in the CLEC request, it can be protected adequately. What other CLECs need to see is not the request, but the particular form of access to Qwest's network that Qwest will provide as a result of the request. That access, because it forms part of the requesting CLEC's "contract" with Qwest, should be available to other CLECs. As is true for those contracts, a reasonable rule for assuring nondiscrimination is to make knowledge of access so gained generally available. Apart from the protection given through denying access to the request itself, CLECs will be on notice of this rule, and therefore should be expected to be judicious in what they provide to Qwest in their requests. The SGAT should therefore contain the following language:

*Qwest shall make available a topical list of the BFRs that it has received with CLECs under this SGAT or an interconnection agreement. The description of each item on that list shall be sufficient to allow a CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of a CLEC to provide sufficient details about the terms and conditions of any granted requests to allow a CLEC to elect to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by the CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this SGAT. A CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to the CLEC of the need therefore.*

Qwest may satisfy the latter, more detailed portion of this request by making the information available on the generally available list or by providing the information on request.

The third aspect of this issue concerns standardization of products or services first made available through BFRs. There is a substantial interest in assuring that network access granted through the BFR process become standardized as soon as it reasonably can. Qwest made note of the expense of the BFR process, but that expense falls largely on the CLECs in the last analysis. Qwest charges fees to recover its costs for processing BFRs; CLECs must prepare each one at their own expense. There is not sufficient information, given the small number of BFRs to date, from which to determine whether Qwest can improve the process of moving from BFR to standardized product and service offerings. Moreover, there is no pre-set number of "similar" BFRs after which there should of necessity be such standardization. How similar those BFRs were and how complex are the offerings are factors that will need to be considered.

The SGAT language proposed by this report immediately above should do much to mitigate the costs associated with subsequent requests, including, in some cases, considerations of costs and prices. Should experience demonstrate in the future, as it has not done to date, that Qwest lags in standardizing offerings, the dispute resolution procedures of the SGAT are available for CLECs to seek relief.

#### 16. Scope of Audit Provisions

SGAT Section 18 addresses audits. This section limits allowable audits and examinations to "the books, records, and other documents used in the billing process for services performed" under the SGAT. AT&T wanted to expand the scope of these provisions, in order to allow audits and examinations of other aspects of performance under the SGAT. AT&T cited only verification that proprietary information is being maintained as required as an example of a significant additional area for audits and examinations, but it would not limit the audit and examination provisions to this additional area. AT&T's brief did assert that audit provisions are routinely granted in other contracts that require the exchange of intellectual property.<sup>77</sup>

Qwest responded that if AT&T had concerns in other areas of performance, it could use the SGAT's dispute resolution procedures to get any documents necessary to resolve them. Qwest particularly objected to the fact that CLEC examinations would provide an opportunity to get around the SGAT's dispute resolution discovery provisions, merely by requesting an "examination," which is substantially similar in purpose. Qwest also objected to the disruption that could occur in the case of unfettered CLEC examination rights across the broad spectrum of activities that Qwest must perform to meet its SGAT obligations. Finally, Qwest objected to allowing CLECs such deep access into the operation of its business.<sup>78</sup>

**Proposed Issue Resolution:** The audits of information about billing share an important characteristic; they are mutual, because both parties may make errors or omissions that affect bills. The parties will mutually exchange confidential or proprietary information as well. Moreover, abuse of the protections applicable to such information, whether by design or through neglect, can be hard to detect through the normal interchanges that will take place between the parties. Therefore, there is a sound reason for extending the audit provisions to any question that may exist with respect to either party's compliance with requirements to protect such information. However, there are valid concerns about extending examination rights to these cases. Examinations are not limited in number, which distinguishes them from audits.

There are natural limits to the places where billing examinations may go, because of the narrowness of the parts of the organizations that address billing matters. The same is not true of confidential information. Examinations to investigate or discover who has what proprietary information could extend to a wide range of each party's organization. Those examinations could become disruptive. Moreover, there has been no showing that they, as opposed to occasional audits have an important role in investigating compliance with SGAT requirements. It is one thing to seek access to sets of documents that each party

<sup>77</sup> AT&T GT&C Brief at page 31.

<sup>78</sup> Qwest's GT&C Brief at pages 38 and 39.



knows or expects to be in existence to support proper billing. It is quite another to pursue open-ended inquiries into whether any place contains or any person possesses documents that should be in only a very few places and known to a very small group of persons. Therefore, while audits should be allowed in the case of compliance with proprietary information protections, examinations should not.

As to areas beyond billing and proprietary information, it must be remembered that the PAP will address performance measurement auditing and other testing and the PAP will also address root cause analyses of persistent performance deficiencies. The PAP should also provide substantial financial incentives in all areas that the parties have agreed are important to successful performance by Qwest, from the Commission and CLEC perspectives. There is no reason at present to question the sufficiency of these measures to assure quality and compliant performance, which is the purpose that audits and examinations would serve.

Moreover, even if there were some reason to doubt the sufficiency of the PAP to address other areas of performance, the gravity of that doubt would have to be balanced against the potentially great inconvenience that could result from unconstrained CLEC examinations into any area of performance. Also weighing substantially in that balance would be the issue of competitive information transfer that could result if CLECs had wide access to how Qwest performs activities that compete with the CLEC's own existing or potential means of performing similar activities. Qwest does have to make its network available to CLECs; it does not have to make available peculiar knowledge that makes certain aspects of its operations particularly competitive.

There is of course, the argument that confidentiality can be protected by the use of protective agreements limiting use of the information in CLEC business operations. However, a practical conception of the use of such agreements must recognize that their effectiveness is inversely proportional to both the number of people who have access and the breadth of knowledge of the competitor's total business operations involved. From that view, offering them as a protective measure is not highly comforting.

Therefore, the SGAT section on auditing should contain the following section to address audits of proprietary information use:

*Either party may request an audit of the other's compliance with this SGAT's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting party has provided to the other. Those audits shall not take place more frequently than once in every three years, unless cause is shown to support a specifically requested audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this SGAT Section 18 that are not inconsistent herewith shall apply, except that in the case of these audits, the party to be audited may also request the use of an independent auditor.*

The granting of the right of the audited party to request an independent auditor (only the auditing party has that right now under the frozen SGAT) is intended to reflect the

particularly extensive access such an audit might require in organizations dealing with particularly sensitive information of the audited company.

Qwest's brief also noted that AT&T objected to the SGAT Section 18.3 provisions for treating audit information as confidential. AT&T did not brief this issue. Moreover, it is evident that audit information should be treated as confidential.

### 17. Scope of Special Request Process

AT&T noted that Qwest limited the special request process to UNE combination requests. The SRP is more streamlined than the BFR process is, because the SRP does not require a consideration of technical feasibility, which must already have been established. The purpose of the SRP is to address deviations in a requested service from the circumstances that apply to services and products that have pre-established prices and other terms and conditions. AT&T argued that the SRP should be available for all non-standard offerings for which there is no question about technical feasibility.<sup>79</sup>

Qwest made no response to this proposal on the merits. It argued that this workshop was intended only to address how the process worked, not to what it would apply.<sup>80</sup>

**Proposed Issue Resolution:** Qwest took too narrow a view of the questions deferred to this workshop. We are unaware of any document or statement that would have put all the participants on notice that we would here consider anything less than a general review of the SGAT provision dealing with the SRP. AT&T's request is reasonable; there is nothing unique about UNEs that makes them any more or less amenable to SRP resolution than are other non-standard elements or services, such as stand-alone UNEs, for example. That concluded, however, the language of SGAT Exhibit F, which addresses the SRP, does extend beyond UNE combinations. It is not clear what specific kind of expansion AT&T now seeks; therefore, the SGAT should be deemed as already providing an adequate basis for streamlined consideration of access to UNEs not yet subject to standard terms and conditions.

AT&T also incorporated by reference those parity arguments it made in connection with the BFR process, which was addressed under the *Bona Fide Request* issue above.<sup>81</sup> The resolution proposed there is equally applicable here. Parity with Qwest's retail operations is not an appropriate way to evaluate Qwest's execution of the SRP for CLEC requests.

### 18. Parity of Individual Case Basis Process with Qwest Retail Operations

As it did in the case of the Special Request Process, AT&T also incorporated by reference those parity arguments it made in connection with the BFR process, which was addressed under the *Bona Fide Request Process* issue above.

**Proposed Issue Resolution:** The resolution proposed under the preceding *Bona Fide Request Process* issue is equally applicable here. Parity with Qwest's retail operations is not an appropriate way to evaluate Qwest's execution of the SRP for CLEC requests.

<sup>79</sup> AT&T GT&C Brief at page 32.

<sup>80</sup> Qwest GT&C Brief at page 36.

## IV. Section 272 Separate Affiliate Requirements

### A. Background

Section 272 of the Telecommunications Act of 1996 imposes substantial structural and nonstructural safeguards applicable to the provision of in-region InterLATA service by BOCs, such as Qwest. The FCC has said that section 271(d)(3)(B) of the Act makes compliance with section 272 an independent ground for denying relief under section 271.<sup>82</sup> The FCC specifically said that:<sup>83</sup>

*Congress required us to find that a section 271 applicant has demonstrated that it will carry out the requested authorization in accordance with the requirements of section 272. We view this requirement to be of crucial importance, because the structural and nondiscrimination safeguards of section 272 seek to ensure that competitors of the BOCs will have nondiscriminatory access to essential inputs on terms that do not favor the BOC's affiliate. These safeguards further discourage, and facilitate detection of, improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate. These safeguards, therefore, are designed to promote competition in all telecommunications markets, thereby fulfilling Congress' fundamental objective in the 1996 Act.*

The FCC has recognized that this requirement obliges it to make "a predictive judgment regarding the future behavior of the BOC."<sup>84</sup>

Section 272 imposes a series of specific requirements, whose purposes include: (a) preventing improper cost allocation and cross-subsidization between Qwest and its §272 affiliate, and (b) assuring that Qwest does not discriminate in favor of this affiliate.<sup>85</sup> In summary, the provisions of Section 272 that are in dispute here require that:

- Qwest Communications provide in-region InterLATA service through an affiliate that is separate from Qwest Communications (the BOC) [§272(a)]
- The §272 affiliate "maintain books, records, and accounts in the manner prescribed by the Commission, which shall be separate from the books, records and accounts maintained by" Qwest Communications [§272(b)(2)]

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<sup>81</sup> AT&TGT&C Brief at page 32.

<sup>82</sup> *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (released Oct. 13, 1998) ("BellSouth Louisiana II Order"), at ¶ 322.

<sup>83</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released Aug. 19, 1997), ("Ameritech Michigan Order"), at ¶ 346.

<sup>84</sup> Ameritech Michigan Order at ¶ 347.

<sup>85</sup> *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999), (FCC BANY Order) at ¶401.

- The §272 affiliate have "separate officers, directors and employees" from those of Qwest Communications [§272(b)(3)]
- Transactions with Qwest Communications be conducted "on an arm's length basis with any such transactions reduced to writing and available for public inspection" [§272(b)(5)]
- Qwest Communications not discriminate in favor of its §272 affiliate in any dealings between the two [§272(c)(1)]
- Qwest Communications account for all transactions with its §272 affiliate in accord with FCC accounting principles [ 271(c)(2)].

For ease of reference, the following list of Qwest entities will be discussed in this portion of the report:

- Qwest Communications International (QCI): the parent company of the Qwest family of enterprises
- Qwest Corporation (QC): the BOC, which is the entity that provides local exchange service in the 14-state region once served by US WEST
- Qwest Services Corporation (QSC): a wholly owned subsidiary of QCI, the parent; QSC owns the long distance affiliate, which is Qwest Communications Corporation
- Qwest Communications Corporation (QCC): the currently designated §272 affiliate; QCC is wholly owned by QSC and it is the pre-merger entity through which Qwest had previously provided InterLATA services in many areas of the United States
- Qwest Long Distance, Inc. (QLD): the entity that Qwest and before it US WEST used for some time to provide InterLATA service outside its 14-state region, and, until fairly recently the designated §272 affiliate.

Qwest filed the Section 272 testimony of Marie Schwartz and Judith Brunsting on March 30, 2001. AT&T filed the Affidavit of Cory Skluzak on May 4, 2001 and the Supplemental Affidavit of Cory Skluzak on May 17, 2001. Qwest filed the rebuttal testimony of Marie Schwartz and of Judith Brunsting on May 23, 2001. Qwest, AT&T and the Wyoming Consumer Advocate Staff filed briefs on section 272 issues<sup>86</sup> on July 25, 2001. AT&T and Qwest both filed Reply briefs on August 1, 2001.

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<sup>86</sup> WYCAS's comments on section 272 urged the Wyoming Commission to review the entire record, including confidential testimony and exhibits, and to "seriously consider the concerns raised by the intervening parties". Post-workshop Brief of the Consumer Advocate Staff on Issues Relating to Public Interest, Track A and Section 272, Arising Out of Workshop Session 7 and Workshop Session 8, pages 4-5.

## B. Separate Affiliate Requirements

### 1. Separation of Ownership

Qwest's testimony was that QCC, its designated §272 affiliate, is a wholly owned subsidiary of QSC, which in turn is wholly owned by the parent, QCI. Qwest also testified that QC and QCC own no stock in each other.<sup>87</sup> AT&T presented no evidence or argument to contest this testimony, although it did perform and present the results of its extensive examination of Qwest's compliance with Section 272 requirements.<sup>88</sup>

**Proposed Conclusion:** The uncontroverted evidence of record in these workshops fully supports a conclusion that QCC, the QCI entity currently proposed to provide in-region InterLATA service following anticipated §271 approval, is, by virtue of the corporate structure and ownership under which it operates, separate from QC, which is the entity that provides local exchange service in the seven participating states.

### 2. Prior Conduct

AT&T cited three prior instances that it says demonstrate a history of Qwest's non-compliance with the §272(a) requirement that in-region InterLATA services be provided through a separate affiliate:

- A September 27, 1999 FCC finding that "U S WEST's provision of non-local directory assistance service to its in-region subscribers constitutes the provision of in-region, InterLATA service," and that "the nationwide component of U S WEST's non-local directory assistance service was unlawfully configured."<sup>89</sup>
- A September 28, 1998 FCC conclusion that U S WEST, through its marketing arrangement with pre-merger Qwest, was "providing in-region, InterLATA service without authorization, in violation of section 271 of the Act."<sup>90</sup>

A February 16, 2001 FCC ruling that Qwest's "1-800-4US-WEST" calling card service constituted the provision of in-region, InterLATA service in violation of section 271.<sup>91</sup>

Qwest argued that each of these three cases resulted from a good faith difference of opinion (in some cases the same ultimately rejected opinion was held by at least one other BOC) about what the statutory term "provide" means in the context of in-region, InterLATA service. Finally, Qwest argued that reliance on past behavior as predictive of likely §272 compliance should be confined to behavior related to §272. Qwest argued

<sup>87</sup> Brief of Qwest Corporation in Support of Its Compliance with the Requirements of 47 U.S.C. §272 (Qwest 272 Brief), at pages 5 and 6.

<sup>88</sup> Affidavit of Cory W. Skluzak Regarding Section 272, Exhibit S7-ATT-CWS-1 (Skluzak 272 Affidavit).

<sup>89</sup> *Petition for U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, CC Docket No. 97-172, Memorandum Opinion and Order, FCC 99-133 (released September 27, 1999), ¶¶ 2 and 63. See Exhibit S7-ATT-CWS-1, ¶¶ 106-109.

<sup>90</sup> *AT&T Corp. et al., v. U S WEST Communications, Inc.*, File No. E-99-42, Memorandum Opinion and Order, FCC 98-242 (released October 7, 1998), ¶¶ 1, 38 and 52. See Exhibit S7-ATT-CWS-1, ¶ 110.

<sup>91</sup> *AT&T Corp v. U S WEST Communications, Inc.*, File No. E-99-28, Memorandum Opinion and Order, DA01-418 (released February 16, 2001). See S7-ATT-CWS-1, ¶ 113.

that historical performance with respect to §271 requirements, which are different, has no place in a predictive examination related to §272.<sup>92</sup>

**Proposed Conclusion:** The examples cited, while significant in their own right, are not predictive of future Qwest conduct that is relevant to the issue of meeting the separate subsidiary requirements of §272(a). A proper examination of the significance of AT&T's references to the three prior FCC findings requires us to separate the analysis of §272(a) requirements into two related, but distinct, parts:

- Does the service in question constitute in-region intraLATA service?
- Assuming it does, then, is it being provided through a separate affiliate?

AT&T has unarguably demonstrated that Qwest has failed in a significant number of prior cases to determine correctly what does and does not constitute in-region InterLATA services. In other words, Qwest has often enough answered the first question incorrectly. However, there is no reason to believe that Qwest's subsequent decision to provide the services directly was a consequence of its refusal to accept the obligation to use a separate subsidiary for in-region, InterLATA services. Quite to the contrary, it is self-evident that Qwest only failed to use a separate subsidiary in the mistaken belief that the services did not constitute in-region, InterLATA service.

The important question here is whether Qwest accepts the separate subsidiary obligation and stands ready to meet it; the preceding proposed conclusion demonstrates that it does. Qwest's violations in the three examples cited were entirely a function of failing to meet the requirements of section 271, which is what the FCC found. Extending that to a §272 violation is at best peripheral to a predictive assessment of whether Qwest will accept the responsibility to provide in-region, InterLATA service through a separate subsidiary.

Qwest was held accountable in the past for failing to correctly interpret what constitutes in-region, InterLATA service; it should and undoubtedly will be so held in the future. There is, however, no reason to conclude here that such interpretations have had or will have anything material to do with the parallel issue of creation and maintenance of a separate subsidiary to provide in-region, InterLATA service.

### C. Books and Records

Section 272(b)(2) of the Communications Act says that the §272 affiliate:

*shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records and accounts maintained by the Bell operating company of which it is an affiliate.*

AT&T took issue with several aspects of Qwest's performance under this standard:

- Use of generally accepted accounting principles (GAAP)
- Relevance of the GAAP Materiality Principle

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<sup>92</sup> Qwest 272 Brief at pages 29 and 30.

- Adequacy of Documentation or "Audit Trail"
- Sufficiency of Internal Controls
- Separate Charts of Accounts
- Separate Accounting Software

### 1. Generally Accepted Accounting Principles

Qwest cited the testimony of its witness Brunsting in support of the conclusion that QCC follows GAAP.<sup>93</sup> Qwest said that QCC and QLD have used accrual accounting, which is required by GAAP. Moreover, while contesting the requirement that QC must also follow FCC requirements in accounting for transactions with the §272 affiliate,<sup>94</sup> Qwest said that the rebuttal testimony of its witness Schwartz shows that QC (the BOC) does follow such accounting requirements.

AT&T's examination of books and records disclosed what it considered to be many examples of a failure by QCC and by QLD (when it was the §272 affiliate) to follow accrual accounting and to make timely transaction entries into its books and records.<sup>95</sup>

- Failure to record any QC/QCC transactions between July 2000 and April 2001
- Use of artificially high billing rates for service to QCC, which served to create cross subsidies and to deter use of services by third parties
- Failure to accrue and pay expenses for roughly half (as a percentage of total services billed) the services rendered to QLD until the year after the services were provided
- Billing monthly services provided to QLD (such as rent) only yearly
- Other failures to accrue expenses for services to QLD on a timely basis

Qwest's main brief did not address the merits of each of the findings made by Mr. Skluzak in his Exhibits S7-ATT-CWS-1 and 2. However, it did concede that it had not accrued expenses payable to QCC before it was designated as its §272 affiliate, but argued that this fact is not probative because the amount in issue constituted less than 1 percent of QC's total yearly affiliate transactions, and because the failure to accrue expenses was for a time period before QCC became its designated §272 affiliate.<sup>96</sup>

Qwest's reply brief did object to the AT&T contention that no QC/QCC transactions were posted between July 2000 and April 2001, but again relied not on contesting the factual accuracy of the findings of Mr. Skluzak, but upon the arguments that: (a) the transactions in question predated the time when QCC was designated as the §272

<sup>93</sup> Qwest 272 Brief at page 7.

<sup>94</sup> Qwest said that the FCC's GAAP requirements under §272(b)(2) and (c) apply only to the §272 affiliate, not to the BOC.

<sup>95</sup> AT&T's Brief on Section 272 of the Act (AT&T 272 Brief), at page 5, citing specific paragraphs (see fn 17 and 18) of the examinations that Mr. Skluzak performed of Qwest books and records, which were described in Exhibits S7-ATT-CWS-1 and 2.

<sup>96</sup> Qwest 272 brief at page 8.

affiliate, and (b) that AT&T made no claim that Qwest is now failing to accrue and pay expenses on a timely basis.<sup>97</sup>

Qwest's reply brief did address some of the AT&T findings about the failure to accrue expenses associated with services to QLD when it was the designated §272 affiliate. It provided evidence to show that:

- One expense item that AT&T found to be accrued in the year after services was in fact was accrued on a timely basis
- Two expense items that AT&T said were paid late were not paid on a current basis because they were disputed by QLD under Master Services Agreement procedures posted on the web site
- One expense item that AT&T said was not accrued properly appeared to duplicate another already criticized by AT&T.

Qwest's brief did appear to acknowledge what it would term "isolated instances" and insignificant failures to bill or accrue expenses involving QLD.<sup>98</sup>

Qwest also argued that consideration should be given to the difficulty it faced when it decided after the merger to change from one affiliate to another as the entity that would provide in-region, InterLATA service. Qwest cited the testimony of its witness Brunsting that it took from mid-January to late-March of 2001 to accomplish the transition, which included a review of all QCC asset records to address asset ownership and special billing controls issues, to realign more than 7,500 employees, and to examine all relevant contracts and post-merger transactions. QCI's outside auditor provided assistance in identifying the transactions. Qwest noted that, after completing this transition, it was able to reduce discrepancies between its postings and its billings to zero percent for April and May 2001. The April data was submitted as an exhibit at the workshop; the May data was submitted in an e-mail sent two days before the filing of reply briefs on §272 issues.<sup>99</sup>

Qwest's brief summarized a number of the detailed changes it made to assure proper controls in the area of §272 compliance:<sup>100</sup>

- Quarterly monitoring of asset transfers
- Training of "key network leaders"
- Establishment of a Compliance Oversight Team that reviews all QCC transactions for compliance
- Annual code-of-conduct training and employee certification
- Targeted training for QC sales executives who do business with QCC
- Physical separation and color-coded badging of employees

<sup>97</sup> Reply Brief of Qwest Corporation in Support of its Compliance with the Requirements of 47 U.S.C. §272 (Qwest 272 Reply Brief) at page 3.

<sup>98</sup> Qwest 272 Reply Brief at pages 10 and 11.

<sup>99</sup> Qwest 272 Reply Brief at pages 7 and 8.

<sup>100</sup> Qwest 272 Reply Brief at page 9.



- Establishment of a compliance hotline
- Other special training

Qwest said that the FCC has found similar measures at other BOCs sufficient to meet what Qwest quoted as the applicable test, which is to demonstrate that the BOC

*has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with Section 272.*<sup>101</sup>

**Proposed Conclusion:** Qwest focuses overmuch on the date at which QCC and QLD were and were not designated §272 affiliates. The issue that is material here is to determine the degree of confidence that can be placed in the ability to provide proper, complete, and timely recognition on the books and records for transactions between these entities. The past customs of the Qwest family of companies is relevant whether or not the transactions occurred when QCC was designated as the §272 affiliate. QC provides local exchange service under regulation by each of the seven participating commissions. It would be difficult to imagine Qwest arguing before them that the regulated entity has not operated since time out of mind under an obligation to provide adequate assurances that the regulated entity charges and receives (with respect to services among affiliates) fair and appropriate prices. Cross-subsidization is by no means an issue that the Telecommunications Act of 1996 created. Public service commissions have long concerned themselves with whether regulated services were burdened by costs that other affiliates should bear, or deprived of revenues that other affiliates should not be taking. It is doubtful that US WEST has in the past operated without recognition of this concern of state regulators; in any case if it failed to have such recognition, it should draw no sympathy at this point.

Therefore, we begin the analysis of this issue under the proposition that the burden to account properly for inter-affiliate transactions has not changed sufficiently (by passage of the 1996 Act or any FCC pronouncements thereunder) to render irrelevant the performance history for periods prior to designation as a §272 affiliate. However, we begin as well by rejecting any notion that once an entity is so designated, one should look at transactions involving that entity before it was such an affiliate no differently from the transactions that predated it. We will look at transactions from the perspective of what status the involved entities had when the transactions took place and we will judge the significance of those transactions to forward-looking circumstances appropriately. To do otherwise, would be to anomalously apply hindsight, on the one hand, or to erroneously expunge all transaction history before the 1996 Act came along.<sup>102</sup>

The material conclusions that can be drawn include the following:

- Qwest did not, outside the context of §272, find it sufficiently important to assure that transactions between QC and QCC were accrued on a timely basis, or paid promptly or subjected to interest penalties for untimely payment

<sup>101</sup> Qwest 272 Reply Brief at pages 9 and 10, citing the *SBC Texas Order* at paragraph 398 and the *BANY Order* at paragraph 405 and note 1253.

<sup>102</sup> This sentence of course assumes that it is acceptable to selectively split infinitives, as it were.

- Qwest did eventually undertake substantial efforts to bring its transactions, both past and current, into compliance with applicable accounting requirements
- The very magnitude of that effort gives reason to merit validation that the efforts undertaken have had current effect and are likely to continue to prove sufficient to meet applicable requirements
- The evident lack of attention to the kinds of transaction details that QC clearly would have paid had a third party (as opposed to an affiliate) been at the other end of the bargain buttresses the need for validation of the current and future effectiveness of the recent improvement efforts by Qwest
- The fact that AT&T's testing did disclose some errors with respect to QLD also buttresses this need, although it should be emphasized that the AT&T findings that remain valid after consideration of the documents Qwest provided on the record would not alone produce sufficient concern to warrant special measures at this time.

Therefore, Qwest should be required to arrange for independent (i.e., third-party) testing, covering the period from April through August of 2001 to determine: (a) whether there have been adequate actions to assure the accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with QC/QCC transactions, (b) whether the relationship between QC as a vendor or supplier of goods and services and QCC has been managed in an arm's length manner, including, but not necessarily limited to a consideration of what would be expected under normal business standards for similar contracts with an unaffiliated third party, and (c) whether there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide the level of accuracy, completeness, timeliness and arm's length conduct found in examining the preceding two questions.

This examination should be conducted under the following requirements:

- Apply the testing and evaluation criteria deemed necessary by an independent party (qualified to perform such an examination) to provide a high degree of confidence that the answers it provides to these two questions can be relied upon by regulators
- Consider in the development of test procedures the need for the completion of the examination and the filing with the seven participating commissions of the report described below no later than November 15, 2001
- Produce a report and supporting work papers that present a factual basis upon which regulators can form their own, independent answers
- The current independent auditor, whose personnel have substantially contributed to the creation of transaction detail whose adequacy will be examined, should not be considered for the performance of this examination
- Apply a materiality standard that does not consider consolidated financial results, or even the overall financial results of QC. In determining what would constitute a material failing or exception in connection with the two questions to be

answered, the examination will consider as the applicable universe not more than the total transactions between QC and QCC over the period to be covered. The reasons for this application of this materiality standard are described in the discussion of the immediately following issue.

Positive answers to the three established questions, under the type of examination identified herein, should be sufficient to reduce to an acceptable level the current uncertainty about whether entry into the in-region, InterLATA market will be accompanied by compliance with the requirements of section 272(b)(2). Such answers will do so by validating whether the major efforts that Qwest has recently undertaken to produce significant change in its prior practices have achieved the changes from past practice that are necessary to comply in the future with these requirements.

Qwest's brief correctly noted that the "biennial audits" contemplated under section 272(d)(1) do not begin until after market entry under §271. Those audits serve a much broader purpose than the examination procedures contemplated here. Biennial audits, for example, will have to examine the much-expanded relationships between BOCs and their affiliates after those affiliates enter new markets. Qwest's brief also suggested that requiring it to undergo an audit here would impose an inordinate burden on it, because the FCC has required no other BOC to undergo a §272 audit before gaining §271 relief.<sup>103</sup> The examination proposed here is not, however, a "§272 audit." Rather, this examination is intended to determine whether the substantial efforts that Qwest has only recently undertaken, which it presumably undertook because it recognized the need for them, are sufficient to provide, in light of its recent history, adequate assurances that it will begin (presuming that the FCC allows it) an era of in-region InterLATA service in compliance with §272(b)(2) requirements.

Qwest did provide evidence of at least partial success (its findings of zero percent discrepancy in reconciling Internet postings with billing detail). However, their introduction, particularly the one that was filed two days before the reply briefs, so late in the process does not give sufficient comfort that they resulted from complete and fully reliable (for our purposes here) examinations.

## 2. Materiality

Qwest cited the opinion of its outside auditor for QCI's consolidated operations as evidence that QCI follows GAAP in all material respects. Qwest further said that the FCC has found that a showing about the parent's consolidated financial statements was sufficient to persuade the FCC in the Louisiana II 271 order that the §272 affiliate also followed GAAP.<sup>104</sup>

AT&T took issue with Qwest's use of such a materiality standard. It noted that the testing and examination undertaken by the outside auditor before providing its opinion might not have tested any transactions between QC and QLD. AT&T said that, in designing its sampling, the auditor would have had to deal with a universe that included \$13.2 billion in consolidated QCI income and \$9.8 billion in consolidated expenses in

<sup>103</sup> Qwest 272 Reply Brief at pages 8 and 9.

<sup>104</sup> Qwest 272 Brief at page 7.

1999. By contrast, QC paid QLD \$29 million and QLD paid QC \$3.5 million in this period. Thus, AT&T said, what was material to the BOC/§272 affiliate relationship might well not be material in the consolidated QCI context. AT&T went on to reject the relevance of applying materiality even in a narrower context, however, citing the General Standard Procedures for Biennial Audits, which it said the Joint Federal/State Oversight Group has established. AT&T said that those procedures required all errors or discrepancies to be reported.

**Proposed Conclusion:** Underlying Qwest's main brief and its testimony were notions of materiality as it is defined in connection with the statements one typically sees from independent auditors in connection with the filing of required public disclosures of consolidated financial statements. Designed to give comfort to investors, such statements understandably and appropriately focus on overall results. They may well, as is likely the case here, be based on test procedures that resulted in the examination of none, let alone a representative example, of the transactions between QC and its §272 affiliate.

This feature of such statements makes them all but irrelevant in addressing the degree to which the transactions between QC and QCC or QLD comply with the requirements of §272(b)(2). What counts in addressing materiality is not QCI's entire universe, nor even QC's total universe, but the universe that consists of transactions between QC and QCC or QLD. AT&T is therefore correct to a substantial degree in its argument. It goes too far in dismissing materiality altogether, however.

That step has the effect of requiring perfection with respect to completeness, accuracy, and timeliness. It is self-evidently true that this standard could not be met in its own operations or, more importantly, in the operations of any wholesale supplier. Moreover, the standards that AT&T cited only relate to what must be reported in a biennial audit. The issue here is what should be considered material for determining pre-market entry compliance with §272(b)(2). The fact that something merely has to be included in a report of an audit for a different purpose hardly means that it would alone be grounds for a determination that market entry should be denied for non-compliance with §272(b)(2).

Thus, the concept of materiality should remain a part of evaluating compliance with §272(b)(2), but the universe to which the standard of materiality should be applied consists of the total transactions, in the time period in question, between QC and QCC or QLD.

### 3. Documentation

AT&T said that, as of January 2000, QC stopped providing information that is material to meeting the disclosure requirements of §272(b)(2). Until that time, postings to its web site included the following information:

- Service agreements
- Work and task orders issued under those agreements
- Details of specific transactions under the agreements and orders.

AT&T said that Qwest dropped the transaction details from the list of posted information. AT&T further argued that the failure to post QCC transactions prior to April 2001 demonstrates lack of an audit trail.<sup>105</sup>

**Proposed Conclusion:** As footnote 8 of AT&T's 272 brief indicates, this aspect of the AT&T argument depends upon the same failure to make timely accruals that AT&T cited to support its argument that Qwest does not comply with GAAP. The additional argument made here is that Qwest recently decided to remove from its Internet posting the details of particular transactions that take place under general agreements or work/task orders. That additional argument is misplaced. The point of public posting of transaction information is to permit a non-affiliated entity to decide if it wished to make use of the same services that are being provided to a Qwest affiliate.

An auditor may have reason to test actual compliance with posted terms and conditions, but that does not mean that the public posting should support audit requirements, as opposed to the need for making a decision about the value of services that a non-affiliate might be able to secure. Thus, the public posting issue, which is addressed more fully below, has nothing to do with the question here at issue, which is whether there exists somewhere the information necessary to allow a validation that the services actually being provided to affiliates are in accord with the posted agreements, work orders, and task orders upon which non-affiliates must rely in deciding whether to take service from Qwest.

That said, the issue raised by AT&T is not clearly severable from the accrual issue already raised and dealt with above. The examination recommended earlier in this report should test whether the posting of information is consistent not only with what the company says it provides for affiliates, but with what is actually provided. Therefore, if there is any difficulty in determining what is actually being provided and under what terms and conditions it is being provided, the examination required above will already address it. Therefore, no further action is necessary to address this aspect of AT&T's argument.

#### 4. Internal Controls

AT&T also argued that its findings about the lack of timely accrual and billing for services demonstrated a lack of adequate controls at Qwest.<sup>106</sup>

**Proposed Conclusion:** Again, AT&T relied here upon the same factual basis as it used to argue that Qwest fails to follow GAAP. As noted under that issue, Qwest has cited many changes it has made to provide assurances that it is now complying with all applicable requirements. The examination recommended above was intended to determine whether those Qwest actions have produced sufficient assurances of such compliance. Therefore, this aspect of AT&T's concerns will be adequately addressed by that examination.

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<sup>105</sup> AT&T 272 Brief at page 8.

<sup>106</sup> AT&T 272 Brief at page 9.

### 5. Separate Charts of Accounts

AT&T noted that it took several efforts before it could finally secure charts of accounts for QC, QCC, and QLD. AT&T acknowledged that it eventually secured them and that they satisfied the requirement that they be separate. AT&T argued that the failure to provide evidence of such separateness demonstrates a lack of diligence with respect to compliance with this requirement.<sup>107</sup>

**Proposed Conclusion:** The evidence of record demonstrates an acknowledgement by AT&T that the requirement about which it has expressed concern has in fact been met. The issue is not whether AT&T's examiner found them without effort, but whether they in fact existed. The record demonstrates that Qwest maintains separate charts of accounts for the entities involved.

### 6. Separate Accounting Software

AT&T said that it could find no evidence that QC and QLD were using separate accounting software. AT&T also said that it had found evidence that there had been a reversal of a billing to an affiliate, which called into question the Qwest assertion that it was not possible for one Qwest entity to enter a transaction by using any Qwest entity code other than its own. AT&T acknowledged that there is evidence that QC and QCC have separate accounting codes.

**Proposed Conclusion:** Much of AT&T's argument assumes that separate accounting software between the BOC and the 272 affiliate is required. However, AT&T has provided no legal support for that contention, which, in any event, runs counter to the FCC's recognition that inter-affiliate services represent an opportunity for economies of scale that should not be denied a company such as Qwest.

The real issue is whether the accounting function is separately performed and subject to adequate controls. AT&T acknowledges that the evidence now indicates that QC and QCC have different accounting software, which is more than sufficient to demonstrate separateness. As to the issue raised about QLD, citing a single instance of a reversal is not demonstrative of a systemic weakness or failure. Moreover, the fact that a reversal was made does not necessarily relate at all to the ability of one affiliate to make entries into the records of another affiliate. Stand-alone companies (i.e., those with no affiliates at all) reverse entries when they bill the wrong customer. That an entity can correct its own entry should not be in question; the issue is whether one entity can enter information as if it were another entity.

The evidence presented raises no substantial argument that Qwest fails to adequately separate the accounting of the BOC and the 272 affiliate.

## D. Separate Officers, Directors, and Employees

AT&T asserted that Qwest's conduct to date demonstrates inadequate compliance.<sup>108</sup>

<sup>107</sup> AT&T 272 Brief at page 11.

<sup>108</sup> AT&T 272 Brief at pages 12 and 13.

- Employee transfers back and forth between QC and the 272 affiliate
- 100 percent usage by the 272 affiliate of many QC employees
- Participation of 272 affiliate employees in a QC award program
- Lack of comparison of payroll registers
- Lack of separate payroll administration<sup>109</sup>
- Officer Overlap

### 1. Routine Employee Transfers

Section 272(b)(3) says that the 272 affiliate "shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate." AT&T said that a "revolving door atmosphere" has produced movement back and forth between QC and the section 272 affiliate, which has "subverted" the purpose of this section of the Act.

Qwest argued that neither the Act nor the FCC precludes movement back and forth between QC and QCC. Specifically, Qwest said, what is prohibited is "simultaneous" employment by both.<sup>110</sup> Qwest also cited the fact that such transfers involve fewer than 100 employees.<sup>111</sup> Qwest also said that it has taken adequate steps to prohibit any inappropriate conduct that might result from such employment movement, including:<sup>112</sup>

- Requiring the return of 272-affiliate assets by an employee leaving the 272 affiliate
- Requiring employees leaving the 272 affiliate to account for documents in their possession
- Requiring employees leaving the 272 affiliate to acknowledge that they will no longer have access to that affiliate's information and that they may not disclose the affiliate's information
- Requiring such employees who take positions with another Qwest entity to sign a non-disclosure agreement that prevents the sharing of non-public information between the companies
- Instituting procedures training to ensure compliance with section 272
- Requiring employees to review annually the Code of Conduct that governs relationships among the QC affiliates
- Providing training for new employees
- Informing employees that violations may lead to disciplinary action that includes termination of employment
- Providing for physical separation of the offices of QC and QCC

<sup>109</sup> These last two elements of AT&T's argument came in its 272 Reply Brief, at pages 5 and 6.

<sup>110</sup> Qwest 272 Brief at pages 11 and 12.

<sup>111</sup> June 7, 2001 transcript at page 159.

<sup>112</sup> Qwest 272 Brief at pages 12 and 13.

- Providing color-coded badges to identify the 272 affiliate's employees.

**Proposed Conclusion:** Congress has not prohibited movement between affiliates; it requires instead independent operation and separate employees. AT&T's argument conflates the Congressional concern about operating independence and separation of employment. A "revolving door" policy could arguably compromise independent operation. However, transfers of fewer than 100 employees out of the thousands involved in the restructuring that Qwest did among QSC, QC and QCC do not establish that Qwest is using transfers back and forth in a way intended to or actually causing a compromise of operational independence. With the current level of transition in the communications business, such levels can hardly be expected even to exceed the number of displaced Qwest personnel who find employment with CLECs, let alone sufficient to raise immediate concerns about operational independence and the protection of information.

The steps that Qwest has taken to assure independent operation and protection of confidential information are adequate to establish a baseline mode of operations that gives current assurances that it will meet applicable requirements. The existence of such a baseline is all that is required for present purposes, given the monitoring and examination of employee transfers that will take place in the future, for example, as part of biennial auditing.

The record here supports a conclusion that Qwest maintains the required degree of employee separation, and that transfers to date, given the mitigation measures adopted by Qwest and not challenged as to sufficiency by any other party, do not rise to a level that suggests a compromise of operational independence.

## 2. 100 Percent Usage

AT&T argued that employment of "many" individuals by QC who have been assigned full-time to the work of the 272 affiliate, also subverts the purpose of section 272(b)(3).<sup>113</sup>

Qwest responded with the general argument that the FCC clearly does not prohibit service sharing, which presumably would require the assignment of some QC employee time to the 272 affiliate he or she serves. Qwest then went on to say that its policy is to limit such assignments to specific time periods, functions, and projects, which relate to services posted on the Internet, and which are available to non-affiliates.<sup>114</sup> QC and QCC also agreed to implement a new policy prohibiting such assignments for periods of more than four months out of any twelve.

**Proposed Conclusion:** We must begin by recognizing that the FCC allows shared services between a BOC and its 272 affiliate. We next must understand that if the BOC is providing such services, the recipient (the 272 affiliate) must pay for them. Thus, it should not be considered surprising or inappropriate to find a substantial percentage of a BOC employee's time being charged to the 272 affiliate over what looks to be a long period of time. In fact, if one considers the economies of scale that come from common

<sup>113</sup> AT&T 272 Brief at page 12.

<sup>114</sup> Qwest 272 Brief at page 14, citing the June 7, 2001 transcript at pages 300 and 301.



provision of services (which we must, given the FCC's recognition of both the value and propriety of common services) it would also not be surprising to find that what four employees can provide the 272 affiliate through one quarter of their time, one employee can provide more efficiently through 100 percent of his or her time. Accordingly, without knowing more, there is no reason to be immediately critical upon observing that an employee has assigned substantial time to the 272 affiliate on a long-term basis.

On the other hand, we can think of examples where 100 percent assignment of time to the 272 affiliate is more clearly troublesome. Take as an example the hypothetical case where the director of marketing for the 272 affiliate is a BOC employee who assigns all time to the 272 affiliate. Such a complete and long-lasting separation of nominal employment and actual responsibility should trigger questioning, because the use of long-term assignments of senior personnel to an affiliate can have the tendency to compromise the separate employment requirement. However, it is not possible to prescribe the exact conditions where such compromise would lead to a conclusion that there occurred a failure to meet the intent of that requirement.

Certainly, the commitment to limit full-time assignments to no more than four months of any twelve represents a good-faith effort to simplify what can become a murky, very judgmental question to address. That proposal is therefore acceptable for present purposes, recognizing that experience gained through ongoing monitoring efforts (such as those attendant to biennial auditing) will be the better judge of how long-term separations of employment and assignment affect the fulfillment of Section 272 objectives.

### 3. Award Program Participation

AT&T cited an award program that allowed the participation of both QC and QCC personnel, which, AT&T said, compromised the independent operation of the two entities. AT&T said that its witness's examination of Qwest records disclosed the payment of "team awards" to former employees of QLD who were later "rehired" by QC. It appeared from AT&T's examination that, after returning to Qwest, the former QLD employees received such awards. AT&T found that a terminated work order (RMLD099) listed on QLD's website described a program that rewarded employees for customer referrals and cost saving ideas; AT&T said that QLD employees were allowed to participate in this program.<sup>115</sup>

Qwest said that the FCC had already rejected a claim by AT&T that the FCC should, "prohibit the BOCs from using any compensation system that directly or indirectly bases any part of the compensation of BOC officers, directors, or employees on the performance of the affiliate, or vice versa."<sup>116</sup>

**Proposed Conclusion:** As a general matter, the FCC has already decided that at least the overall performance of the BOC can be considered in compensating 272 affiliate employees and vice versa. However, tying individual compensation to overall affiliate performance is not what is at issue here. The FCC should not be read as being indifferent to a compensation mechanism that specifically induces BOC or 272 affiliate employees

<sup>115</sup> Exhibit S7-ATT-CWS-1, at paragraph 30.

<sup>116</sup> Qwest 272 Reply Brief at footnote 69, citing paragraph 186 the *Non-Accounting Safeguards Order*.

to act in a manner that would promote inappropriate inducements for customers to change carriers. Therefore, if the compensation mechanism at issue can be read to create a clear inducement to misuse information or to act anti-competitively, a further inquiry would be in order.

A close reading of the exhibit relied upon by AT&T does not present any evidence of improper inducements. There is nothing wrong with inducing a QC or a QCC/QLD employee (whether or not a former employee of the other) for referring customers or offering cost saving suggestions for the benefit of their employer. Both have customers and both have costs. The primary incentive, not to mention the primary knowledge base and the primary concern of the employee's management, can be expected to be the business of the affiliate by whom the employee is currently employed. It is farfetched to project, as AT&T does, that such a program will have the effect of causing an employee to spend material time trying to refer customers or save costs for the other company, rather than for the one by whom it is currently employed.

Except in the case of a misuse of information (otherwise dealt with through conduct restrictions and training, as is elsewhere discussed in this report), there is no compromising of independent operation by virtue of the fact that there is a common customer referral and cost-saving reward system.<sup>117</sup> It is true that the record does not disclose all of the facts about the operation of this reward system. There has been no claimed shortage of discovery opportunity in these proceedings. Absent more from the proponent of this issue, therefore, it remains clear that there is no significant likelihood that running it to ground will bear significantly on Qwest's compliance with the independent operations requirements of section 272.

#### 4. Comparing Payroll Registers

Qwest testified that it performed a comparison of the payroll registers of QC and the 272 affiliate, and that this comparison showed no overlap.<sup>118</sup> AT&T argued that the evidence demonstrated that such comparisons came about only recently, thus demonstrating that Qwest had failed to verify earlier that it complied with separate payroll requirements.<sup>119</sup> AT&T specifically said that it was clear that Qwest, before these proceedings, had never conducted a payroll register analysis for prior years.<sup>120</sup>

**Proposed Conclusion:** AT&T has cited no requirement that there be routine, cyclical payroll register comparisons for some period predating a 271 application. Thus, the issue of whether Qwest has performed them repeatedly in the past is not directly relevant. The primary issue is whether the evidence before us shows what the current practice is and how well it is implemented. The evidence of record demonstrates that there is not at present an overlap, that Qwest recognizes the obligation to preclude overlap, and that Qwest considers an examination of payroll registers to be an appropriate tool in assuring that the restriction against simultaneous employment is being met.

<sup>117</sup> This conclusion stands even if (although it has not been proven that the program is intended to reward employees for actions intended to benefit QCI entities other than the one that employs them directly) the occasional impact of the program is to an employee of one affiliate for benefits to another affiliate.

<sup>118</sup> Qwest 272 Brief at page 10, citing its Exhibits S7-QWE-MES 1 and MES-3.

<sup>119</sup> AT&T 272 Brief at page 13, citing Exhibit S7-ATT-CWS-1, at paragraph 31(j).

<sup>120</sup> AT&T 272 Reply Brief at page 5.

Under these circumstances, we can conclude that the requirement is being met, that there is no basis in this record for concluding that it has not been met historically, and that we may be satisfied that the biennial audits will suffice to assure that the requirement continues to be met.

### 5. Separate Payroll Administration

AT&T argued that the performance of recruiting by QCC for QC and the lack of separate payroll administration between the two would undermine any conclusion that the companies maintain the operating independence required by section 272(b)(1).<sup>121</sup> Qwest noted that AT&T has conceded in testimony that separate payroll administration is not an FCC requirement, and it noted that the payroll administration function that QC provides for QCC is available as required to non-affiliates at posted rates, terms, and conditions.<sup>122</sup>

**Proposed Conclusion:** What AT&T essentially complains of, in both the cases of recruitment and payroll administration, is the provision of common services between the BOC and the 272 affiliate (i.e., between QC and QCC). The FCC has, however, specifically rejected the notion that common services should be prohibited as a means of encouraging "independence" as AT&T would define it. To the contrary, the FCC has endorsed common services, outside the network-related areas where they are specifically prohibited, as a means of capturing economies of scale.<sup>123</sup> This rule is particularly sound, as it allows Qwest to do no more than to exploit the same kinds of economies that are available to other efficient competitors in the marketplace.

Hamstringing the BOCs is not the goal; assuring that they do not unduly advantage themselves is. The conduct limits, simultaneous employment restrictions, biennial auditing, and other requirements are sufficient to mitigate the potential for such discrimination. There is no evidence here of any need to go further and remove those natural economies that, in a competitive marketplace, inure to the benefit of customers. Were we to eliminate these two areas of common service, there would be no end to the debate, short of prohibiting any at all, about which services should be permitted and which should not.

### 6. Officer Overlap

AT&T expressed concern about the independence of 272 affiliate employees, officers and directors.<sup>124</sup>

Qwest said that this individual has not been an officer of QCC since it became the 272 affiliate on March 26, 2001. From that time forward, according to Qwest, the individual has been an employee and officer of QSC and a director of QC (the BOC).<sup>125</sup>

**Proposed Conclusion:** The cited transcript pages contain no information from which it can be concluded that the employee whose status AT&T questioned simultaneously

<sup>121</sup> AT&T 272 Reply Brief at pages 5 and 6.

<sup>122</sup> Qwest 272 Brief at page 15.

<sup>123</sup> Third Order on Reconsideration, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 14 FCC Rcd 16,299, ¶ 18 (1999).

<sup>124</sup> AT&T 272 Reply Brief (Confidential Version) at page 6.

<sup>125</sup> Qwest 272 Reply Brief at page 16, citing the June 7, 2001 transcript at page 265.

served the BOC and the 272 affiliate as an employee, officer, or director. In fact, there is no evidence that the employee was ever an employee or officer of QC, the BOC. The employee came from the Qwest side of the pre-merger house. The employee did become, according to the evidence, a director of the BOC, but after leaving employment with QCC. The evidence does not show that the employee ever was a director of QCC. When asked about whether AT&T's witness had any information that the employee served both QC and QCC simultaneously, he could not recall without reference to his notes. There was subsequently no testimony from AT&T regarding those notes.

The record fully supports the conclusion that there was no simultaneous service. Moreover, this employee made a clear break from the pre-merger Qwest side of the house before taking on a position as a director of QC. It is beyond unrealistic to expect no movement between companies such as Qwest and US WEST after a merger; more importantly, such movement is not improper. AT&T's suggestion that this one cited incident somehow casts doubt on the independence of the 272 affiliate's employees, officers, and directors is without a substantial factual basis, and is lacking a clear legal foundation.

## **E. Transaction Posting Completeness**

Section 272(b)(5) requires the 272 affiliate to cause its transactions with its affiliated BOC to be "reduced to writing and available for public inspection." The FCC has set the standard for meeting this requirement in saying that:

*[T]he description of the asset or service and the terms and conditions of the transactions should be sufficiently detailed to allow [the FCC] to evaluate any compliance with our accounting rules.*

AT&T claimed that Qwest failed to meet this standard in a number of ways:

- By deciding to stop posting the specific billed amounts necessary for AT&T to determine whether Qwest complied with FCC accounting rules
- By failing to post on a timely basis transactions with QCC from the time that it became a 272 affiliate
- By failing to provide service completion dates for some services
- By failing to provide the required verification of the accuracy of the publicly posted information.

### **1. Posting Billing Detail**

AT&T objected to Qwest's decision, apparently effective as of January 1, 2000, to stop posting "billed amounts" under the transactions whose terms and conditions Qwest was making public. From that point, Qwest began to limit inspection of such information to on-site examinations by those who first executed protective agreements.<sup>126</sup> AT&T said

<sup>126</sup> AT&T 272 Brief at page 14.

that posting the agreements, work orders, and task orders is not sufficient, because non-affiliates need to see the transaction details in order to make an informed decision about whether to take the same services. AT&T would include in such required detail the actual service or items purchased and the amount actually paid for it. AT&T said that such detail was also required to verify that there was no discrimination against non-affiliates in providing the services or items at issue.<sup>127</sup>

Qwest said that its posting of Master Services Agreement, along with work orders thereunder, served to provide adequate notice of the details of the services provided, the dates of service commencement and completion, and the prices charged, with additional detail available to those willing to execute a nondisclosure agreement.<sup>128</sup> Qwest said that the FCC had already objected to the very same request for billing detail that AT&T made here. Specifically, according to Qwest, the FCC approved of SBC's postings, over AT&T's objections, even though they did not include "the billing details about individual occurrences of services provided pursuant to its agreements." Qwest also noted that it provided a monthly reconciliation of all transactions accrued and billed.<sup>129</sup>

**Proposed Conclusion:** The requirement for making transaction information available serves two purposes, which are distinct and which require distinct levels of information. The first purpose is to provide competitors with enough information to make a business decision, i.e., whether to avail themselves of their right to take services on the same terms and conditions as are provided by the BOC to its 272 affiliate. Serving that purpose does not necessarily require the posting of the individual transaction detail that AT&T seeks. Depending upon what they contain, the master agreements and work orders under them may be sufficient. It is correct that the information posted needs to describe the terms and conditions under which services were actually provided, should they differ from what the master agreements or work orders provided. However, the monthly posting of what Qwest calls "reconciliation" or what AT&T calls "true up" data can serve this need. The examination recommended under the preceding *Books and Records* discussion will address the sufficiency of the master agreements, work orders, and reconciliation data to provide competitors with an adequate specification of terms and conditions to allow rational decisions about taking services.

The second purpose for making transaction data available is to assure that audits or other formal examinations of transactions can take place. There is no sound reason why a public posting of such data is necessary to accomplish this purpose. There are, to the contrary, substantial reasons for not making such information publicly available. The nature and level of services that are provided inside Qwest are competitively sensitive. A competitor may get access to any service that a BOC provides for a 272 affiliate. There should not be free access to the exact level and timing of services that a BOC is providing. Therefore, requiring non-disclosure agreements and on-site examinations of such information constitute appropriate means for assuring that audit-related work can take place without allowing competitors to make competitive use of the information observed. In fact, if there are adequate means for regulatory review of such information,

<sup>127</sup> AT&T 272 Brief at page 20.

<sup>128</sup> Qwest 272 Reply Brief at page 12.

<sup>129</sup> Qwest 272 Reply Brief at page 13, citing paragraphs 405 and 407 of the *SBC Texas Order*.

it may be argued that access to such information could logically be denied to competitors altogether.

## 2. Initiation of the Posting of QCC Transactions

There was substantial debate about when QCC became, for purposes of transaction posting, subject to section 272 requirements. AT&T argued that Qwest's assertion that the initiation date was March 26, 2001 was undercut by Qwest's own evidence, which supported a date of January 1, 2001. Thus, according to AT&T, Qwest violated the posting requirements by failing to post transactions before late March of 2001. Moreover, AT&T said that QCC became, by operation of law, a section 272 affiliate as of the July 2000 US WEST/Qwest merger effective date.<sup>130</sup> AT&T continued by reciting many instances of "late" transaction postings, which generally correspond to the same cases of failure to follow GAAP or to provide sufficient internal controls (see the earlier discussion under *Books and Records*). AT&T also noted that the web site of the former 272 affiliate, QLD, was activated in September of 1998, close to two years after the effective date of the *Accounting Safeguards Order*, which established transaction posting requirements.<sup>131</sup>

Qwest responded that it is now providing timely transaction posting, that it should not be obliged to post transactions before an entity becomes a section 272 affiliate, that many of the cases cited by AT&T occurred during the unsettled period of the transition to QCC as the 272 affiliate during the first 3 months of 2001,<sup>132</sup> and that AT&T's arguments here essentially repeat what it termed elsewhere as a failure to follow GAAP, a lack of internal controls, impermissible discrimination, and a failure to follow accounting rules.<sup>133</sup>

**Proposed Conclusion:** In the first instance, AT&T begins from an illogical conception of what constitutes a section 272 affiliate. AT&T incorrectly argues that QCC became a 272 affiliate by operation of law when it became affiliated with a BOC through merger in July 2000. Not all BOC affiliates are necessarily section 272 affiliates; in fact, none may be, depending on the circumstances. Even an affiliate that provides out-of region InterLATA services is not automatically a 272 affiliate. That section only says that manufacturing, in-region InterLATA telecommunications, and InterLATA information services need to be provided through a separate affiliate. If no such services are being provided, then there is under the Act, no "272 affiliate." Moreover, the transaction posting (and other) requirements of section 272 only apply to "the separate affiliate required by" section 272.

Therefore, absent the provision of in-region, InterLATA services (the other two categories are not at issue here), it can be argued that there was and is, at least for some purposes, no "272 affiliate" within Qwest. Alternatively, if there were, then every QC affiliate would have to be so construed prior to the time that an election was made.

Thus, there is no inherent reason for concern about a decision to elect to provide what continues to be a future service offering through an affiliate different from the one earlier

<sup>130</sup> AT&T 272 Brief at page 15.

<sup>131</sup> AT&T 272 Brief at pages 15 through 18.

<sup>132</sup> Qwest 272 Reply Brief at page 4.

<sup>133</sup> Qwest 272 Reply Brief at footnote 4.

expected to carry out that role. Nor is it necessarily wrong to allow a reasonable transition when such a change is made. Nor does it necessarily constitute an admission against interest to post transactions for an earlier period. AT&T's arguments to the contrary not only strain the plain language of federal law past the breaking point. They would impose a circular string of obligations that would make it impossible for a BOC to make and to revisit reasonable organizational and business decisions in the course of its preparations to meet requirements applicable to a business it has not yet even entered, but must prepare for if it is to meet the substantial public requirements associated with that business.

We have already addressed whether Qwest's traditional accounting practices and controls give sufficient confidence about its ability to meet 272 requirements after it may enter the business to which the section applies. AT&T has presented no sound argument or evidence that we should go further by addressing in this particular Qwest's historical compliance.<sup>134</sup> The recommendation under the earlier *Books and Records* discussion seeks an examination of the effectiveness of recent Qwest changes in systems, practices, and controls in giving assurances that it is committed and prepared to comply with section 272 requirements on a predictive basis. No more is required here.

### 3. Indefinite Service Completion Dates

AT&T argued that the FCC requires that transaction postings provide either the length of time or estimated completion date of any project. AT&T said that it found agreements between QC and QCC that have "indefinite" completion dates.<sup>135</sup> There was testimony that such examples exist because the services are provided under agreements of indefinite duration, which Qwest also said was the case in its brief.<sup>136</sup>

**Proposed Conclusion:** We need no evidence of record to state the self-evidently true conclusion that commercial contracts often provide for indefinite terms subject to the right of either party to terminate them by providing notice. There is no reason to believe that the FCC did or should have intended to restrict the ability of BOCs and their 272 affiliates to enter into such contracts. The requirement that completion dates or estimates be provided should not be construed as prohibiting what AT&T has objected to, which are "agreements" that have this common form of establishing duration. AT&T's position finds no support either in commercial practice or in the requirements of the FCC, which do not prohibit agreements of indefinite duration. Whether work and task orders under such agreements are sufficiently precise and complete is a different matter; it is not those, but the "agreements" under which they are issued that AT&T has addressed here.

<sup>134</sup> Parenthetically, it is worth noting the confusion created by the lack of care that AT&T's testimony and briefs showed in making it clear that it was relying upon essentially the same factual circumstances to support what amounted to many different claimed violations. The value in mentioning this circumstance is to help prevent the impression that there are many more apparent, independent occurrences of alleged violations than actually existed. Given the way that AT&T chose to present its evidence and argument, it took a painstaking effort to determine which of the many AT&T arguments ultimately depended on the same instances.

<sup>135</sup> AT&T 272 Brief at page 18, citing paragraph 337 of the *Bell South Louisiana II Order*.

<sup>136</sup> June 8, 2001 transcript at pages 40, 41, and 45 and Qwest 272 Reply Brief at footnote 53..

#### 4. Verifications

Paragraph 122 of the *Accounting Safeguards Order* requires that transaction information available for public inspection be accompanied by a certification declaring that:

*An officer of the BOC has examined the submission and that to the best of the officer's knowledge all statements of fact contained in the submission are true and the submission is an accurate statement of the affairs of the BOC for the relevant period.*

AT&T presented evidence that it found no statements during its examinations in 1998 and in 1999; Qwest admitted that it filed none, because it construed the certification requirement as applying only after filing of a section 272 application.<sup>137</sup> AT&T later discovered certifications for QC and QCC, which were filed by the same officer. The signer was listed as an officer of QCC, but not of QC. AT&T argued that the failure of a QC officer to sign the QC certification constituted a violation of the *Accounting Safeguards Order*.

Qwest acknowledged that the signer for QC was no longer an officer of QC when she signed its certification. Qwest's testimony was that the controller position of QC was vacant at the time of the certification; therefore, the signer, who was also an officer of QC's parent, made the certification for QC. After AT&T's examination at Qwest's offices, Qwest replaced the certification with one signed by the person then serving as QC's controller.<sup>138</sup>

**Proposed Conclusion:** Fulfilling the requirement that an officer certify the accuracy of information such as that at issue here as an important element of providing a proper environment for controlling performance. It assures accountability at a level that is presumably sufficient to assure attention to accuracy. The record here shows that, whatever requirements may have applied in past periods when, as AT&T found, QC did not file certifications, QC does recognize the obligation to make such certifications. There is no basis for a predictive conclusion that QC is not likely to comply with applicable certification requirements.

The use of a QCC officer to sign the recent certification, since amended, is more questionable. It may be, given the vacancy in the QC controller position, that no other officer of QC had the requisite knowledge to make the certification, but Qwest did not testify to that, nor does it seem probable that such was the case. Even had it been, caution should have suggested that the certification signed by the QCC officer contain a disclosure regarding the reasons why a QC officer was unavailable to make the certification.

The primary significance of the evidence on this issue is that it tends to confirm the transitional nature of Qwest's handling of inter-affiliate relationships issues in the period in question (the certification in question was signed on March 20, 2001).<sup>139</sup> The effectiveness of the actions taken by Qwest during that transition would already be

<sup>137</sup> AT&T 272 Brief at page 22, citing the June 7, 2001 transcript at pages 253 and 254.

<sup>138</sup> June 7, 2001 transcript at pages 250 and 253.

<sup>139</sup> Exhibit S7-ATT-CWS-1, ¶ 61.



examined under a preceding recommendation of this report. That examination should confirm that QC continues to have adequate controls in place to assure that a QC officer who has the requisite knowledge provides the required certifications. Beyond this confirmation, this issue raises no other predictive concerns about Qwest compliance with the requirements of section 272.

## F. Non-Discrimination

Section 272(c)(1) says that a BOC, when dealing with its section 272 affiliate:

*May not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards*

Much of AT&T's argument about Qwest's non-compliance with this provision concerns the failure to make timely payments.<sup>140</sup> In addition, AT&T presented testimony asserting that Qwest has not addressed a number of items that the FCC considers in examining compliance with this requirement.<sup>141</sup> Those items were:

- Whether QCC will be informed of planned network outages before public notice is given
- Whether Qwest will continue to participate in public standard-setting bodies
- Whether Qwest has committed not to discriminate in establishing interconnection or interoperability standards
- Whether Qwest has stated that it would not discriminate in the processing of PIC orders
- Whether Qwest has stated that it would comply with the FCC's prohibition against the use of its Official Services Network to provide InterLATA services
- Whether employee transfers between the BOC and the 272 affiliate create a concern that there will be an improper flow of confidential information between the two entities
- Whether Qwest has proved that it will provide nondiscriminatory access to its OSS.

Qwest responded that its testimony contained commitments to comply with the non-discrimination requirements of sections 272(c) and (e).<sup>142</sup>

**Proposed Conclusion:** AT&T's list of items ignores that the general issue of discrimination was addressed in depth at the preceding workshops, at which many of the items on the list were the subjects of testimony. In addition, Qwest's testimony for this

<sup>140</sup> AT&T 272 Brief at page 25.

<sup>141</sup> Exhibit S7-ATT-CWS-1, ¶ 81.

<sup>142</sup> Qwest 272 Reply Brief at footnote 6, citing Exhibits S7-QWE-MEW-1 at pages 5 and 6 and 29 and 30 and S7-QWE-JLB at page 23.

particular workshop did address a number of additional items on the list, e.g., OSS access. Finally, as was discussed above, the evidence here shows a moderate number of employee transfers to date, the existence of measures to protect against the improper use of sensitive information, and an ability to address future transfers and information use. Thus, the evidence before us shows that the kinds of issues AT&T says the FCC considers have been addressed, and that all participants have had an ample opportunity to present any evidence that bears upon the FCC's consideration of them.

### **G. Compliance With FCC Accounting Principles**

AT&T's brief noted that the examples it testified to under issues relating to non-compliance with GAAP and the lack of internal controls also demonstrated a failure to comply with the section 272(c)(2) requirement that a BOC, in dealing with its 272 affiliate:

*account for all transactions ...in accordance with accounting principles  
designated or approved by the Commission.*

**Proposed Conclusion:** This issue has already been dealt with in the discussion of Books and Records, relating to compliance with GAAP. The application of the 272(c)(2) standard does not add materially to the considerations already made there.

## V. Track A Requirements

### A. Background

47 U.S.C. § 271(c)(1)(A) sets forth what are known as the Track A requirements. This section says:

*(A) PRESENCE OF A FACILITIES-BASED COMPETITOR. — A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.*

The FCC phrased the questions involved in interpreting this provision as follows in § 271 proceedings involving Ameritech:<sup>143</sup>

*In response, numerous parties argue that Ameritech has failed to satisfy various aspects of the section 271(c)(1)(A) requirement. In particular, these parties contest:*

- (1) whether Ameritech has signed one or more binding agreements that have been approved under section 252;*
- (2) whether Ameritech is providing access and interconnection to unaffiliated competing providers of telephone exchange service;*
- (3) whether there are unaffiliated competing providers of telephone exchange service to residential and business customers; and*
- (4) whether the unaffiliated competing providers offer telephone exchange service exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities*

<sup>143</sup> Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Record 20543, 20577-99 (1997) (Ameritech Michigan Order) ¶¶ 62-104.

*in combination with the resale of the telecommunications services of another carrier.*

*We address these issues separately in order to determine whether Ameritech meets section 271(c)(1)(A).*

The workshop participants combined the testimony and briefing of Track A issues with their treatment of the public-interest standard. That standard is addressed at 47 U.S.C. § 271(d)(3)(C), which requires a conclusion that the requested authorization under § 271 “is consistent with the public interest, convenience, and necessity.” Questions about the degree of local-exchange market entry by competitors arise here under both standards. However, the contexts for consideration of those questions differ somewhat. Moreover, we are addressing in separate workshops the question of the sufficiency of Qwest’s plan for assuring that its markets remain open after its entry into in-region InterLATA service (that plan is called the QPAP). All participants agree that the QPAP is a central element of satisfying the public interest test of § 271(d)(3)(C). Therefore, it is premature to address the public interest test here. We will instead consider the public-interest aspects of market-share testimony and arguments combined here with Track A considerations when issuing the next workshop report, which will consider the QPAP.<sup>144</sup>

Qwest filed the testimony of David Teitzel on Track A and Public Interest on March 30, 2001 and the rebuttal testimony of this same witness on May 23, 2001. AT&T filed the Affidavit of Mary Jane Rasher on or about May 4, 2001. No other parties filed Track A testimony.

The following parties filed briefs that contained Track A arguments: AT&T, Sprint, WYCAS and Qwest. Both AT&T and Qwest filed reply briefs on this topic. The Iowa Office of Consumer Advocate filed a brief and reply brief on Public Interest, but some of the argument addressed Track A requirements. Similarly, the New Mexico Public Regulation Commission Staff submitted a brief on public interest that contained some Track A arguments.

This report examines the answers for the seven participating states to each of the four Track A questions framed by the FCC in the Ameritech Michigan Order.

## **B. Existence of Binding, Approved Interconnection Agreements**

The FCC has stated that agreements approved under § 252 of the Act, relating to the negotiation and arbitration of interconnection agreements are considered binding for purposes of Track A, even if they contain interim prices, most-favored-nation clauses, or

<sup>144</sup> There are separate briefing requirements related to QPAP. There will be no further briefing of the public interest arguments already raised here; only the PAP will be addressed in subsequent briefs. Moreover, while the next report will comprehensively address the public-interest standard, it will separately address the sufficiency of the QPAP as it relates to that standard. This distinction is important for the states of Washington and Nebraska, whose commissions are participating in the QPAP portion of these workshops, but which are separately addressing the remaining elements of the public-interest standard, which have not been addressed on the record made here.

fail to include every possible checklist item. The FCC held that, for agreements to be binding, it is sufficient that they "specify the rates, terms, and conditions under which [the BOC] will provide access and interconnection to its network facilities."<sup>145</sup>

Qwest presented evidence demonstrating that, as of April 30, 2001, it had entered into 464 binding, approved interconnection agreements in the seven states, which Qwest summarized as follows:<sup>146</sup>

AGREEMENT TYPE	STATE							
	ID	IA	MT	NM	ND	UT	WY	Total
Wireline	33	44	28	35	21	39	22	222
Wireless, Paging, and EAS	19	27	10	26	9	14	11	116
Resale-Only	17	23	27	19	9	12	19	126
<b>TOTALS</b>	69	94	65	80	39	65	52	464

AT&T, while challenging other aspects of Qwest's satisfaction of the Track A requirements, did not contest the fact that Qwest has entered into these binding and approved agreements with competitive suppliers of local exchange services.<sup>147</sup> Moreover, while there was questioning about whether many of the listed CLECs remained in business in the claimed states, no other participant disputed the existence of a substantial number of interconnection agreements in each state, or otherwise challenged compliance with this element of Track A compliance.

**Proposed Conclusion:** Qwest has met the portion of the § 271(c)(1)(A) requirement that requires it to have signed one or more binding agreements that have been approved under section 252.

### C. Provision of Access and Interconnection to Competitors

Satisfaction of this element of the Track A standard does not require that CLECs receiving access or interconnection have any given geographic service range in a state,<sup>148</sup> nor does it require that they have placed "a substantial commercial volume" of orders or achieved a minimum market share.<sup>149</sup> Qwest offered evidence that it is providing access

<sup>145</sup> Ameritech Michigan Order at paragraphs 72 and 73. Note, however, that interim prices may have relevance to satisfaction of the checklist requirements of § 271.

<sup>146</sup> Exhibit S8-QWE-DLT-9.

<sup>147</sup> Brief of AT&T Regarding Public Interest and Track A (AT&T Track A Brief), at page 24.

<sup>148</sup> Ameritech Michigan Order at paragraph 76.

<sup>149</sup> Ameritech Michigan Order at paragraph 77.

and interconnection in each of the seven states. Its testimony was that it had leased the following numbers of unbundled loops to the following numbers of CLECs in each state, as of April 30, 2001:<sup>150</sup>

STATE	ID	IA	MT	NM	ND	UT	WY
LOOPS	7,746	138,192	2,111	7,715	28,023	27,080	25,163
CLECs	11	14	11	10	12	20	6

AT&T, while challenging other aspects of Qwest's satisfaction of the Track A requirements, did not contest the fact that Qwest was providing access and interconnection to unaffiliated competing providers of telephone exchange service.<sup>151</sup> No other participant challenged compliance with this element of Track A compliance.

**Proposed Conclusion:** The § 271(c)(1)(A) requirement that requires Qwest to be providing access and interconnection to unaffiliated competing providers of telephone exchange service imposes neither geographic range, order volume number, nor market penetration requirements. Qwest's un rebutted evidence addressing unbundled loop leases demonstrates that it meets the requirement that it be providing access and interconnection to unaffiliated competing providers of telephone exchange service.

#### **D. Existence of Competing Residential and Business Service Suppliers**

The first two elements of the Track A test addressed the existence of agreements obligating Qwest to provide access and interconnection and the actual provision of services by Qwest to CLECs under those agreements. This element of the Track A test addresses whether the CLECs involved are actually providing telephone exchange services to residential and to business customers. The FCC has held that there need not be a CLEC that serves both residential and business customers. The test is whether collectively the CLECs in the state serve both customer types.<sup>152</sup>

##### **1. Market Share of Competing Providers**

The Ameritech Michigan Order made it clear that this element of the Track A test is satisfied where a competing carrier is serving more than a de minimis number of end users. However, it did not reach the question of what the result would be if the number of lines served by a competitor were de minimis. Neither did the FCC provide a quantitative indication of what would constitute more than a de minimis number of competitively served access lines. It had no need to address that question because Michigan had "three operational carriers, each of which is serving thousands of access

<sup>150</sup> Exhibit S8-QWE-DLT-9.

<sup>151</sup> Brief of AT&T Regarding Public Interest and Track A (AT&T Track A Brief), at page 24.

<sup>152</sup> Ameritech Michigan Order at paragraph 82.

lines in its service area.”<sup>153</sup> The recent FCC Verizon Connecticut 271 Order does, however, suggest that the number of end users served by CLECs can be material to addressing the satisfaction of Track A requirements. In deciding that this aspect of the Track A standard was met, the FCC said:<sup>154</sup>

*Our comparison of the record in the Kansas/Oklahoma application and the record in this proceeding indicates that residential customers served by competitive LECs on a facilities basis represents a somewhat greater proportion of all Verizon access lines in Connecticut than was the case for Southwestern Bell in Kansas.*

The SBC Kansas/Oklahoma Order cited BOC estimates that competitors served between 9.0 and 12.6 percent of total Kansas service-area access lines and between 5.5 and 9.0 percent of all Oklahoma service- Oklahoma access lines.<sup>155</sup>

AT&T cited the Ameritech Michigan Order as adopting the requirement that there be “an actual commercial alternative to the BOC” and as recognizing that “there may be situations where a new entrant may have a commercial presence that is so small that a new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a ‘competing provider.’” AT&T said that even Qwest’s own estimates demonstrate that CLECs are serving a miniscule number of residential customers in the seven states (0.3 percent overall). AT&T calculated this number by dividing Qwest’s estimated number of CLEC-served residential access lines by the total state population numbers testified to by Qwest.<sup>156</sup>

**Proposed Conclusion:** The Ameritech Michigan Order’s treatment of the question of the size of the market served by a BOC’s competitors did not bear on the decision in that matter, because of the size of the customer base of the CLECs in that state. The FCC, in fact, said specifically in paragraph 77 of the order that “We also do not read section 271 (c)(1)(A) to require that a new entrant serve a specific market share in its service area to be considered a ‘competing provider.’”

AT&T’s calculation of the percentage of residential users served by CLECs is unsound. It merely divides access lines by population, which assumes that each person has an

<sup>153</sup> Ameritech Michigan Order at paragraph 78. Paragraph 79 of this Order makes a distinction that is material here, given that this report addresses only Track A, preserving a discussion of the public interest to the subsequent report. The FCC held specifically in the Ameritech Michigan Order that a conclusion that the Track A requirement involving service to end users would not preclude it from considering “competitive conditions or geographic penetration” in its review of the public interest test. The next report’s consideration of satisfaction of the public-interest standard will be similarly unconstrained.

<sup>154</sup> Memorandum Opinion and Order, *Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100 (Released July 20, 2001) (Verizon Connecticut Order), at paragraph 71.

<sup>155</sup> Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 0-217 (Released January 22, 2001) (SBC Kansas/Oklahoma Order), at paragraphs 4 and 5.

<sup>156</sup> Reply Brief of AT&T Regarding Public Interest and Track A (AT&T Track A Reply Brief) at page 17, citing paragraph 75 and 77 of the Ameritech Michigan Order.

access line. The use of a more proper denominator, such as residential households, might alter the result, but it would certainly remain small. Yet, we know that the FCC has accepted small numbers of CLEC-served end users as satisfying the Track A test in Oklahoma, where the evidence was that competitors served as little as 5.5 percent (or as much as 9.0 percent) of the access lines in the BOC's serving area in that state.

The U.S. Census Bureau ranks Oklahoma as the 27<sup>th</sup> most populous state, which makes it significantly larger than each of the seven states participating here, with the exception of Iowa and Utah. As we will see below, the 90/10 method for allocating access lines between business and residential customers was similar to that accepted by the FCC in the SBC Kansas/Oklahoma Order. Therefore, we can conclude that, in a state more populous than all of the seven participating here and in some cases a number of times so, the FCC has already decided that the portion of the Track A test addressing competitive service to residential customers can be satisfied by numbers in the range of those that AT&T considered insufficient.

FCC information provided by the Iowa Office of Consumer Advocate shows that overall levels of local exchange competition across the country remain moderate, growing from 4.4 percent at the end of 1999 to 8.5 percent at the end of 2000.<sup>157</sup> That nationwide information includes states that are on average significantly more populous than those participating here. With the FCC having granted section 271 approval in so many states, there is not a sound basis for seeking here, effectively, to recast the test it has applied to this element of the Track A standard. We conclude that the decision on this aspect of the Track A test is not illuminated by the arguments that the number of residential customers being served by CLECs is small, or even "minimal." The FCC has already decided that it will not impose a market share test and it has deemed Track A to be satisfied at very low CLEC levels of penetration into the residential market. Therefore, in the event that Qwest can demonstrate that it is providing service at the levels shown in its testimony, it should be considered to meet this element of the Track A standard. The next paragraphs discuss that evidence.

## 2. Estimates of Bypass Lines

In addition to the amount of leased unbundled loops discussed above, Qwest presented estimates of end users, as of April 30, 2001, served through facility bypass, by state, divided between residential and business users. These estimates are summarized below:<sup>158</sup>

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<sup>157</sup> Iowa OCA Brief at page 7.

<sup>158</sup> Confidential Exhibit S8-QWE-DLT-8.



STATE	ID	IA	MT	NM	ND	UT	WY
<b>Bypass Lines</b>	5,546	15,428	3,154	11,596	1,050	58,252	839
<b>Residential</b>	277	1,543	158	580	840	2,913	42
<b>Business</b>	5,269	13,885	2,996	11,016	210	55,339	797

Qwest argued that an estimating technique was necessary because it did not have access to confidential CLEC information about their market shares, and it could not secure the information through discovery against the many CLECs in the seven states who are not participants in these workshops.<sup>159</sup> Qwest estimated the total bypass lines shown in the preceding table by using the known number of lines that it ports to CLECs. Qwest testified that this method provided a reliable indicator of access lines served by competitors, because Qwest ports numbers to CLECs in only two cases: (a) where a CLEC serves a former Qwest customer with the same number but over the CLEC's own network, or (b) where a CLEC serves a former Qwest customer over a stand-alone loop leased from Qwest and connected to the CLEC's own switch.

The Qwest method for making the estimate (which also included subtracting out the lines already counted as CLEC UNES) was to divide ported numbers in half, on the assumption that CLECs might not be continuing to serve the customers whose numbers were ported to them.<sup>160</sup> Qwest said that two specific factors served to make its approach conservative: (a) this division of ported numbers, and (b) the decision not to consider in its estimate the fact that CLECs were serving customers through non-ported numbers. Qwest then generally split the resulting estimate into residential and business lines by assuming that 95 percent of the bypass lines served business customers; the factor was 90 percent for Iowa. Qwest also said its estimation method was much more conservative than the SBC method on which the FCC relied in the Kansas/Oklahoma proceeding. There, SBC estimated that there were 2.75 bypass lines for each CLEC interconnection trunk. Depending upon the state, Qwest said, estimates of bypass lines using the SBC method would be from 200 to 800 percent higher than the estimates that Qwest offered here under its alternate method.<sup>161</sup>

AT&T argued that there is no statistical basis for accepting the linkage that Qwest made between number porting and bypass lines. AT&T also said that the method Qwest used in Washington was demonstrably the same arithmetically, but that Qwest explained differently the steps involved in applying it. AT&T said that the differences in the explanation here produced "a needed air of mystery and obfuscation to an already questionable methodology."<sup>162</sup> AT&T also said that the SBC method fails to pass what it termed a "straight-face test, otherwise Qwest would have relied upon it to the exclusion of its own methodology." AT&T said that the correct inference to be drawn is that

<sup>159</sup> Qwest's Brief in Support of Its Compliance With the Track A Entry Requirements of 47 U.S.C. § 271(c)(1)(A) and the Public Interest Test of 47 U.S.C. § 271(d)(3)(C) (Qwest Track A Brief), at page 28.

<sup>160</sup> Qwest Track A Brief at pages 29 and 30, citing numerous confidential exhibit and transcript references.

<sup>161</sup> Qwest Track A Brief at pages 30 through 33.

<sup>162</sup> AT&T Track A Brief at page 4.

competition in the seven states is "pathetically low" when compared to what existed in Kansas or Oklahoma.<sup>163</sup>

Qwest argued that AT&T merely concluded, without providing any supporting evidence or argument, that there is no relationship between number porting and the number of access lines being served by CLECs.<sup>164</sup>

The Staff of the New Mexico Public Regulation Commission filed a brief addressing public interest issues. That brief contained arguments relevant to Qwest's fulfillment of the Track A standard. The New Mexico Staff criticized the lack of actual numbers of end users served by competitors in the state, noting with some concern the timing and contestability of Qwest's proposal to secure firmer numbers through the service of data requests on CLECs by state commissions. The New Mexico Staff noted that Qwest has the burden of proof and that it has control over the timing of its section 271 application.<sup>165</sup>

Qwest responded that the FCC has relied upon estimates in every section 271 application that it has granted. Qwest said that it must use estimates of bypass lines because only CLECs, who have no motive to assist Qwest, know what self-provisioned facilities they have. Qwest said that it did use actual, not estimated, information for all facilities and services that CLECs take from it, limiting its estimates to bypass.<sup>166</sup>

In addition to criticizing generally the use of estimates, the New Mexico Staff also argued that Qwest's estimation methods were unsound. New Mexico Staff noted that Qwest used a different estimation method for North Dakota and Wyoming, because the method used elsewhere yielded "nonsensical" results for those two states. The New Mexico Staff also argued that Qwest witness Teitzel's claim that his estimates were conservative should be taken as an admission that they were inaccurate. New Mexico Staff also recited problems that existed in some arithmetic aspects of the original Qwest calculations and in underlying support data provided by Qwest in discovery.<sup>167</sup>

Qwest responded by noting that the problem with the data provided in discovery was the omission of a field (interim number portability quantities) that had actually been used in the calculations provided in testimony. Qwest also explained that some of what the New Mexico Staff called calculation errors were in fact recalculations based on updated information that was not available when the testimony calculations were made. Finally, Qwest noted that the mistakes cited were in the preparation of demonstrative exhibits, not in the underlying data or calculations.<sup>168</sup>

New Mexico Staff also cited testimony that it said proved that Qwest had no sound basis for assigning 10 percent of estimated bypass lines to residential customers, noting that Qwest supported the allocation by saying that it was in the range used in the SBC filing for Kansas and Oklahoma.<sup>169</sup> Qwest responded by noting that its method for allocating

<sup>163</sup> AT&T Track A Reply Brief at page 20.

<sup>164</sup> Qwest Track A Reply Brief at page 4.

<sup>165</sup> Brief of New Mexico Staff on Public Interest Issues (New Mexico Staff Brief), at page 12.

<sup>166</sup> Qwest Track A Reply Brief at pages 5 and 6.

<sup>167</sup> New Mexico Staff Brief at pages 13 through 19.

<sup>168</sup> Qwest Track A Reply Brief at pages 9 and 10.

<sup>169</sup> New Mexico Staff Brief at page 20.

bypass lines between residential and business customers was consistent with that accepted by the FCC in the SBC Kansas/Oklahoma application.<sup>170</sup>

**Proposed Conclusion:** It must first be observed that Qwest does not use estimates for all counts of access lines served by competitors. It has substantial direct information about loops that CLECs secure as UNEs from Qwest, for example. Its need for estimation is in determining access line numbers in cases where CLECs bypass Qwest's network, thereby having no reason to divulge to Qwest information from which access line counts can be derived. The FCC is accustomed to using estimates of the number of bypass lines. It has in fact used methods that would have produced much higher counts (and in accord with a method that has withstood objection in prior FCC section 271 proceedings) than what Qwest proposes here.

Qwest has said that it chose to use ported numbers as its estimation base, because the reasons why CLECs have numbers ported bear a substantial relationship to the access lines that they serve. Qwest's explanation of the relationship was logical. More importantly, despite a broad claim by AT&T that there was no relationship, no participant provided any reason to dispute the Qwest evidence about why numbers are ported. There was no evidence or argument that numbers are not ported for each of the two reasons that Qwest cites, nor were other reasons for porting (particularly reasons that do not have a relationship to CLEC access lines) offered.

Qwest's approach produced results that were substantially less than what it could have claimed, had it chosen to use the interconnection trunk multiplier approach, which the FCC has already considered in its section 271 reviews. Moreover, Qwest's use of ported numbers applied two important additional limitations. First, it substantially discounted the resulting number to account for customers no longer served by the CLEC that initially made the porting request. Second, it did nothing to account for CLEC customers who took service under entirely different numbers, thus producing no ported numbers.

This method is certainly not perfect, but it is reasonable, and it has not been subjected to any but the most general and unpersuasive challenge. AT&T's criticism about obfuscation was particularly unfair. There is no mystery in the Qwest formula that middle-school algebra cannot unravel. AT&T, despite figuring out that  $(N-2U)/2 = N/2 - U$  (the mathematical representation of the two different ways that Qwest explained its calculation), went on to criticize Qwest anyway. Equally unconvincing was the argument that Qwest's use of an estimation method more conservative than the SBC one shows that the SBC test cannot even be taken seriously. Suffice it to say that the FCC has taken it seriously. Finally with respect to AT&T's arguments, it also far overstates the case in saying that we can infer that competition is "pathetically low" by comparison to Kansas or Oklahoma. To the contrary, especially after considering population rankings, the levels of competition appear to be comparable.<sup>171</sup>

<sup>170</sup> Qwest Track A Reply Brief at page 9, citing paragraph 42 and note 96 of the *SBC Kansas/Oklahoma Order*.

<sup>171</sup> AT&T's far over-the-top exaggeration on these three claims (arithmetic obfuscation, inanity of the SBC test, and pathetically lower levels of competition) ultimately did little to persuade. AT&T's contribution to these proceedings has been consistently material and positive; this stretching of the limits of proper advocacy was anomalous, but unfortunate.

The New Mexico Staff criticisms of the method and calculations also did not undercut its usefulness, particularly in the absence of any alternative. The criticism that the Qwest method's conservatism proved its inaccuracy actually highlighted not its failure, but only the need to be careful in the use of indirect estimation methods.

Similarly, the New Mexico Staff's criticisms of omissions and errors in Qwest's presentation of the results of its calculations were not persuasive. The problem with the data request ultimately was shown to be the result of a failure to include in the response information actually used in the calculations. This omission was clearly the reason why the calculations could not be recreated from the discovery response. Qwest corrected the omission after cross examination uncovered it and the parties were given time to study the correction and to cross examine again. The Qwest witness showed at this subsequent cross examination that the calculations worked to produce the testified to results when the information missing from the data request response was used. Moreover, Qwest's recalculations to account for new CLEC data (obtained after the calculations were originally performed) cannot be construed as demonstrating error in the original work.

Qwest's business/residential allocation was certainly unsophisticated, but it too has been used before by the FCC in the section 271 context. It will serve here, provided that there is other substantial evidence of record to support the conclusion that any residential service at all is being provided. Qwest's evidence, much of which came from CLEC responses to its data requests, shows that a substantial number of CLECs are providing only business services in those of the seven participating states where those CLECs operate. Given that fact, it would be presumptuous to apply an admittedly rough tool in any individual state unless other evidence supports the conclusion that there are competitors seeking and serving residential customers. In other words, we will not presume the existence of residential competition and merely use the method to determine what portion of it is for residential end users. Rather, we will require an independent showing that there is actual service to residential end users. Only after such a showing will the Qwest estimation method be used to provide a rough measure of its size.

Finally, had the Qwest formula produced results that stray far from actual circumstances, it would seem unusual that none of the CLECs here responded with evidence of their own. While theirs was certainly not the burden of proof, this was their opportunity to present contrary evidence to rebut Qwest's evidence. Only in the event that Qwest had not made a credible showing would there be significant merit in general argument unaccompanied by the presentation of any competing facts. Qwest did make such a showing, and it was one that, moreover, had a foundation in prior FCC decisions. Against that evidence, the general and in many cases outlandish arguments of AT&T cannot stand, unaccompanied as they are by no contrary evidence or any specific demonstration of why the use of ported numbers as an estimate base has no foundation.

#### **4. Number of CLECs Serving End Users**

In addition to its itemization of unbundled elements leased and its quantitative estimates of access lines served by competitors, Qwest presented qualitative information about competition. This latter evidence consisted predominately of a state list of the

competitors serving end users. AT&T did not address the individual CLECs cited by Qwest, but did argue that none of the competitors cited by Qwest could be considered a "commercial alternative" to Qwest until it can handle order volumes at commercial levels or until those competitors can provide service at the same level as Qwest can. AT&T said that Qwest had the evidence available to answer whether such competitors existed, but did not present any such evidence. Moreover, AT&T said that even Qwest's own method demonstrated that CLECs were serving only a de minimis number of residential customers.<sup>172</sup>

Qwest's state-by-state evidence, and the responsive testimony and arguments presented to respond to it, are summarized by state below:

CLEC	IDAHO <sup>173</sup>
	SERVICES BEING PROVIDED
Electric Lightwave, Inc.	Local, long distance, private network, advanced data, and Internet access focused on medium to large communications-intensive businesses
Time Warner Telecom	Local, long distance, data, and Internet services through its own facilities, after acquisition of GST Telecommunications in 2000
Project Mutual Telephone	Local cooperative services to residential and business customers in Burley; announced in 1998 plans to invest in a combined cable/telecom network
Avista Communications	Voice, data, and Internet services to businesses in Lewiston through its own switch and fiber optic network

CLEC	IOWA <sup>174</sup>
	SERVICES PROVIDED
McLeod USA	Acknowledged in data request responses service to residential and business customers
Cox Cable	Residential and business services in Council Bluffs, including residential service through its cable system
Hickory Tech	Facilities-based residential and business services in areas including Urbandale, Clive, Adel. And West Des Moines, overbuilding Qwest network in West Des Moines to provide local, long distance, and DSL services

<sup>172</sup> AT&T Track A Brief at page 26.

<sup>173</sup> Qwest Track A Brief at pages 10 through 12, citing a number of exhibit and transcript references.

<sup>174</sup> Qwest Track A Brief at pages 12 through 15.

Goldfield	Independent telco providing, as a CLEC, out of territory local, long distance, data, and Internet access service to business and residential customers in small exchanges in Goldfield, Eagle Grove, Clarion, and Humboldt
AT&T Broadband	Cable modem service, with plans to expand to telephony this year through a cable system in the western suburban Des Moines metropolitan area

The Iowa Office of Consumer Advocate (Iowa OCA) responded to Qwest's evidence about service in Iowa. The Iowa OCA noted that Qwest had provided evidence that there were 41 competitive local exchange companies in Iowa, and that Qwest later corrected that list to remove five companies and noted that two others had filed for Chapter 11 bankruptcy protection.<sup>175</sup> The Iowa OCA presented evidence that 21 of the companies listed by Qwest had no tariffs on file with the Iowa Utilities Board, thus meaning that they were not empowered to provide local exchange service in the state. The OCA testimony also indicated that 11 companies provided service in isolated, often geographically narrow areas, 3 provided service only to businesses, and 3 provided services only to high-risk customers.<sup>176</sup> Qwest conceded that it did not know how many of the companies on its list were actually providing local exchange service in Iowa.<sup>177</sup>

The Iowa OCA appears to have agreed, based on information that it presented, that Iowa actually has somewhat more than the national level of market penetration by CLECs; competitors held 10 percent of the local telephone lines in Iowa at the end of 2000.<sup>178</sup> This figure compares to the 14.2 percent estimated by Qwest.<sup>179</sup> There is other evidence of competition in Iowa as well, with McLeod USA claiming that it has captured 46 percent of its "addressable market" in the state.<sup>180</sup> The Iowa OCA elicited evidence demonstrating that there is only one CLEC in Iowa that has as many as 10,000 lines.

The OCA placed significant emphasis on the 10,000-line measure, indicating that the FCC had established it, for reporting purposes, as the "level that we expect will allow us to detect emerging market participants when they achieve a fairly significant presence in a given market."<sup>181</sup> There was evidence from one competitor indicating that it provided many times more than this number of both residential and business lines. Qwest's testimony claimed far less than this number of residential customers as being served by all competitors combined.<sup>182</sup>

<sup>175</sup> Exhibit S8-QWE-DLT-8.

<sup>176</sup> Exhibit S7-IOCA-DSH-2, at page 7.

<sup>177</sup> June 26, 2001 transcript, at pages 276 through 280.

<sup>178</sup> *Local Telephone Competition at the New Millennium* (summarizing December 31, 1999 data from Forms 477 and 499-A), Federal Communications Commission, August 2000, Table 4. "Local Telephone Competition: Status as of December 31, 2000", Federal Communications Commission, May 2001, Table 1. These reports can be found at [http://www.fcc.gov/ccb/local\\_competition/welcome.html](http://www.fcc.gov/ccb/local_competition/welcome.html).

<sup>179</sup> Opening Brief: Public Interest, Office of Consumer Advocate ("OCA") Iowa Department of Justice, (Iowa OCA Public Interest Brief) at page 8, citing Qwest's Confidential Exhibit S8-QWE-DLT-8.

<sup>180</sup> Teitzel Direct Testimony, Confidential Qwest Exhibit S7-QWE-DLT-7, at page 19; Exhibit S7-IOCA-DSH-4; Exhibit S7-IOCA-DSH-4.

<sup>181</sup> *In the Matter of Local Competition and Broadband Reporting*, at paragraph 42.

<sup>182</sup> Confidential Exhibits S8-QWE-DLT-25 and 26; Confidential Exhibit S8-QWE-DLT-8.

CLEC	MONTANA <sup>183</sup> SERVICES PROVIDED
Touch America	As subsidiary of major state electric company, purchased Qwest pre-merger long distance operations; providing long distance, Internet access, private line, data, and wireless service; entered contract to allow Electric Lightwave to provide competitive private line and other telecommunications services across its network in Montana
Mid-Rivers	Telecom cooperative providing services as a CLEC outside its region; overbuilt Qwest network in Terry, offering business and residential customers local, long distance, data, and Internet access services; expanded recently to other cities, such as Glendive, Wibaux, Sidney, and Fairview
Blackfoot Communications	Providing business and residences with local, long distance, paging, and Internet access services outside its territory in Missoula, using its own facilities and services leased from Qwest
Avista Communications	Providing business customers in Billings with local, data, and Internet services

NEW MEXICO <sup>184</sup>	
CLEC	SERVICES PROVIDED
Confidential	Confidential
Confidential	Confidential
e.spire	Service in Albuquerque
Time Warner Telecom	Service in Albuquerque

The New Mexico Staff brief argued that: (a) Qwest had listed as New Mexico competitors a number of companies (other than the ones identified in the immediately preceding table) that were not in fact operating in New Mexico, (b) Qwest had conceded that it had no evidence of competition outside Albuquerque, and (c) the competitors listed as confidential above were providing service only to business customers.<sup>185</sup>

	NORTH DAKOTA <sup>186</sup>
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<sup>183</sup> Qwest Track A Brief at pages 15 through 17, citing a number of exhibit and transcript references.

<sup>184</sup> Qwest Track A Brief at pages 17 through 19, citing a number of exhibit and transcript references.

<sup>185</sup> New Mexico Staff Brief at pages 9 through 11.

<sup>186</sup> Qwest Track A Brief at pages 19 through 21, citing a number of exhibit and transcript references.

CLEC	SERVICES PROVIDED
Halstad Telephone	Rural cooperative providing residential and business service through an overbuild of Qwest's network in Halstead, a community of 1,500
Confidential	Confidential
Consolidated Communications	Provision of residential and business service through an overbuild of Qwest's network in a community with approximately 10,000 access lines
Dakota Central Telecom	Subsidiary of a telephone cooperative providing high-speed Internet services to customers in Jamestown and Valley City
Idea 1	Service in the Fargo area through its own digital switch and fiber facilities
McLeod USA	Residential and business local, long distance, data, and Internet access services in a number of communities
Dakota Carrier Network	Consortium of 15 independent telcos that serve in 85 percent of the state's exchanges

CLEC	UTAH <sup>187</sup> SERVICES PROVIDED
AT&T	Service to residential and business customers through TCG and the purchase of TCI, with a cable system passing 600,000 of Utah's 728,000 households; serving in Salt Lake City, Ogden, and Provo/Orem
Confidential	Confidential
Electric Lightwave, Inc.	Local, long distance, private network, advanced data, and Internet access focused on medium to large communications-intensive businesses through its own fiber network
XO Utah	Service to small-medium businesses, with residential services in selected areas

CLEC	WYOMING <sup>188</sup> SERVICES PROVIDED
Silver Star	Service to residential and business customers in Afton and Jackson with its own facilities
Confidential	Confidential

<sup>187</sup> Qwest Track A Brief at pages 22 through 24, citing a number of exhibit and transcript references.

<sup>188</sup> Qwest Track A Brief at pages 22 through 24, citing a number of exhibit and transcript references.



McLeod  
USA

Services to residential and business customers in Casper and Cheyenne

Qwest noted that the preceding state-by-state list constituted a "small sampling" of the competitive markets in the seven states, stating again that its efforts to secure data were hampered by the "few" responses it received to its data requests to CLECs.

**Proposed Conclusion:** There was much questioning and some substantial criticism of the state-by-state list of CLECs that Qwest presented. However, the list cited above generally excludes those CLECs whose continuing existence or empowerment to serve in a given state was questioned or criticized. There was no argument that the CLECs listed here do not provide the services claimed. Those services, based upon a strict reading of Qwest's brief, include the provision of facilities-based business and residential services by CLECs in all but two states: Idaho and New Mexico. In the other five states, the Qwest evidence demonstrates that at least two CLECs are providing residential service.

The record supports a conclusion that the Track A requirement that service be provided to residential customers is established in Iowa, Montana, North Dakota, Utah, and Wyoming. It is not established for Idaho and New Mexico.

Therefore, Qwest's estimates of residential access lines served by competitors may be accepted for all states except for New Mexico and Idaho. In those states, Qwest should be found not to have met Track A standards, for reason of its failure to provide substantial evidence that competitors are serving residential end users.

#### **D. Existence of Facilities-Based Competitors**

We have addressed the first three questions raised by the test established in the Ameritech Michigan Order, which are the existence of agreements, the provision of services under those agreements, and the provision of service to business and residential customers. We reach now the last question, which is whether competing telephone exchange service is being provided: (a) exclusively over CLEC telephone facilities, or (b) predominantly over such facilities in combination with the resale of the telecommunications services of another carrier. The FCC has held that a CLEC's "own" facilities include UNEs that it leases from the incumbent provider.<sup>189</sup>

Qwest's estimation of access lines served by CLECs and its survey of services provided by CLECs in each state also addressed the question of what facilities were being used. The responsive testimony and argument focused on the issue of the estimated total numbers and on the allocation of those numbers of access lines between residential and business customers. That testimony and argument did not address the facilities issue.

**Proposed Conclusion:** Because of the commonality of the evidence presented and the lack of specific challenge to what facilities were being used, the proposed conclusion set

<sup>189</sup> Ameritech Michigan Order at paragraph 99.

forth under the preceding issue, *Existence of Competing Providers of Residential and Business Service*, is equally applicable here.

## **Qwest Multi State General Terms & Conditions "frozen" SGAT lite**

### **Section 1.0 - GENERAL TERMS**

1.1 This Statement of Generally Available Terms and Conditions (SGAT) for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services is filed by Qwest Corporation (Qwest), a Colorado Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 Intentionally Left Blank

1.3 This SGAT sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local exchange service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of \_\_\_\_\_ for purposes of providing local Telecommunications Services. This SGAT is available for the term set forth herein.

1.4 Individual CLECs may adopt this SGAT, in lieu of entering into an individually negotiated Interconnection agreement, by signing the Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT to Qwest, pursuant to the notice provision of this SGAT contained in Section 5.21. The date on which Qwest receives an executed copy of this SGAT shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Qwest shall notify CLEC of the Effective Date pursuant to notice provisions. The Parties shall satisfy all state Interconnection agreement filing requirements.

1.5 This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual Interconnection agreement with Qwest, or adopting an existing approved Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect Qwest's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.

1.6 Intentionally Left Blank

1.7 Once this SGAT is approved or permitted to go into effect, any amendment to the SGAT by Qwest will be accomplished through Section 252 of the Act. When Qwest files an amendment to the SGAT with the Commission, Qwest shall provide notice of such filing through the Co-Provider Industry Change Management Process (CICMP). Qwest shall also request that the Commission notify all interested parties of the filing. In addition, any amendment to the SGAT filed by Qwest shall have no effect on the SGAT (either to withdraw or replace effective provisions or to add provisions) until such amendment is approved by the Commission or goes into effect by operation of law. Once CLEC executes Section 22 and delivers a signed copy to Qwest pursuant to the notice provisions of this SGAT, the currently effective SGAT will become the Interconnection Agreement between the CLEC and Qwest (this Agreement), and shall be

subject to the same rules and laws as other Interconnection Agreements in effect in this state. Once this SGAT becomes the Interconnection Agreement between CLEC and Qwest, this Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the CICMP. CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options:

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, CLEC agrees to abide by those terms and conditions on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates, and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 Because this SGAT is Qwest's standard contract offer, CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, Qwest may require CLEC to accept legitimately related provisions to ensure that the provision retains the context set forth in the SGAT. At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement

which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are legitimately related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are legitimately related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not legitimately related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.3 If Qwest has identified additional provisions that Qwest believes are legitimately related and has specified provisions in the proposed amendment to which those provisions are not legitimately related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are legitimately related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorney's fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorney's fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorney's fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission.

## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement (Agreement) includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule or Tariff applies to such statute, regulation, rule or Tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of the date hereof (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed, or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to agree on an amendment during the 60 day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights

or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.



### **Section 3.0 - CLEC INFORMATION**

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. The Parties shall complete Qwest's "CLEC Questionnaire," as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New CLEC Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new CLEC Questionnaire; however, CLEC will update its CLEC Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this agreement, which may include an amendment pursuant to Section 1.7.1.

3.3 Intentionally Left Blank

3.4 Intentionally Left Blank

## **Section 4.0 – DEFINITIONS**

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order *trunking and facilities* between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a switch used to connect End Office Switches to interexchange Carrier switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent (10%).

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code. AMI T1s are well recognized as Disturbances.

"Applicable Law" means all laws including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability for telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein as baseline requirements documentation.

"Automatic Location Identification" or "ALI" is a the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DMS" is a system of manual procedures and computer programs used to create, store, sort, manipulate and update the data required to provide Selective Routing and ALI.

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer information (including name, service address, telephone number, and sometimes special information from the local service provider) used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automated Message Accounting" or "AMA" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Number Identification" or "ANI" is the billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill and Keep" is as defined in the FCC's Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic). Bill and Keep is an arrangement where neither of two (2) interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Bill and Keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks.

"Bill Date" means the date on which a billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of twenty five (25) color-coded twisted pairs wrapped in colored tape within a cable.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

- "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

- "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact-based consideration of geography and function should be used to classify any switch. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"CLC" or "Carrier Liaison Committee" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIM publish business process rules for their respective areas of concern.

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the \_\_\_\_\_.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" means an intra-Wire Center channel of the appropriate bandwidth and media connecting separate pieces of Telecommunications Equipment, including jumpers and intraoffice cables.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" means telecommunications equipment employed on the

premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data " means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Day" means calendar days unless otherwise specified

"Dedicated Transport" is a Qwest provided digital transmission path between locations designated by CLEC to which a CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest wire centers, Qwest End Office Switches, and Qwest Tandem Switches. The path may operate at DS-1 or higher transmission speeds.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, end user, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Digital Cross-Connect System" or "DCS" is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signal (demultiplexing); The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Listings Information" is information that includes the listed names of End User Customers of a Telecommunications Carrier and such End User Customer's published telephone numbers, addresses, and area code, as may be contained in Qwest's or its Affiliates' Directory Assistance Database or any other Directory format.



"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"Electronic Bonding" is a method of OSS Interoperability defined and approved by ATIS for trouble administration that uses GDMO data models and CMIP/CMISE for secure transport.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more carriers.

"Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with different or restructured information; or involve end-user interaction with stored information.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access (IntraLATA Toll)" is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that

defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as determined by the Commission.

"Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.

"FCC" means the Federal Communications Commission.

"Fiber Meet" is a joint Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface at an agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services; provided however that CLEC may connect UNE Combinations to Qwest Directory Assistance and Operator Services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

"Hub Provider" means an entity that (i) provides common channel signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Information Service" is as defined in the Telecommunications Act of 1996 and FCC Order on Remand and Report and Order in CC Docket 99-68 and includes ISP-bound traffic.

"Information Services Access" means the offering of access to Information Services Providers.

"Information Services Providers" or "ISPs" are providers of Information Services.

"INP" or "Interim Number Portability" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network, but does not

comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23 (a).

"Integrated Digital Loop Carrier" means a subscriber Loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, services, or Unbundled Network Elements either as a result of negotiations and/or arbitration pursuant to pursuant to Section 252 of the Act. When a CLEC signs and delivers a copy of this SGAT to Qwest pursuant to the notice provision of the SGAT, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(f) of the Act.

"Interexchange Carrier" (IXC) means a carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (*i.e.*, without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately Related" terms and conditions are those rates, terms, and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those that specifically relate to other interconnection, services or elements in the approved Interconnection Agreement. These rates terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service ore element. These terms and conditions would not include General Terms and Conditions to the extent that the CLEC's Interconnection Agreement already contains the requisite General Terms and Conditions.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXC's to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service (LIS) Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service (LIS)" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

- aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

- disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

- aggregates a specified number of signals or channels to fewer channels (concentrating);

- performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

- in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central

Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service Charges" are those charges that apply pursuant to the terms of this Agreement when a CLEC reports trouble. Maintenance of Service charges are set forth in Exhibit A.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges. Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two (2) or more LECs (including a LEC and a CLEC), or by one LEC in two (2) or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two (2) or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the carrier in the call routing process immediately preceding the terminating carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two (2) and four (4) seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Descriptions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of telecommunications service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for maintenance and repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Ordering and Billing Forum" or "OBF" means the forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, and Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. Where technically feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point on a Central Office switch but does not include switch features.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pcat/>

"Proof of Authorization" ("POA"). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection of its local service provider.

"Proprietary Information" shall have the same meaning as confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the



NANP in connection with the provision of switched services.

"Rate Center" identifies the specific geographic point and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLEC) for its provision of Telephone Exchange Services. The rate point is a geographic location identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive end user traffic to/from the particular NPA-NXX designations with the specific Rate Center.

"Rate Center Area" is the geographic area within which Basic Exchange Services are provided for NPA-NXX designations associated with a particular Rate Center.

"Rating Point" means the V&H coordinates associated with a particular telephone number for rating purposes.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network. If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

"Remote Premises" means all Qwest Premises as defined in 4.46(a), other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include, but are not limited to, controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. The transport to the Central Office or Serving Wire Center may be based on copper or fiber-based digital technologies.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part ("MTP"), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part ("SCCP"), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part ("ISUP"), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part ("TCAP"), which provides for transfer of non-circuit related information between signaling points.

"Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

"Spectrum Compatibility" means the capability of two (2) Copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all loop lengths, model loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the loop in order to provide both voice and data over a single loop.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, and Remote Switching Modules. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services. Switched Access traffic, as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, price schedules and catalogs.

"Technically Feasible." Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user,

of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary transaction sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Unbundled Network Element" is a network element that has been defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access.

"Unbundled Network Element Platform (UNE-P)" – is a combination of Unbundled Network Elements, including Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including but not limited to single line residence, single line business, and PBX Trunks.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that

were or were not previously combined or connected in Qwest's network as required by the FCC or Commission.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here, but defined in the Act, shall have the meaning defined there.

## **Section 5.0 - TERMS AND CONDITIONS**

### **5.1 General Provisions**

#### **5.1.1 Intentionally Left Blank**

**5.1.2** The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

**5.1.3** Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

**5.1.3.1.** If such impairment is material and poses an immediate threat to the safety of either Party's employees, customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates this provision or refuse to provide the same type of service if it reasonably appears that that particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

**5.1.3.2** If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other party shall provide written notice within five (5) calendar days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

**5.1.3.3** If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

## **5.2 Term of Agreement**

5.2.1 This Agreement shall become effective on the date set forth in Section 1.4 pursuant to Section 252 of the Act. This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire three (3) years from the Effective Date.

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in force and effect until terminated by either Party on one hundred sixty (160) days written notice to the other Party. The date of this notice will be the starting point for the one hundred sixty (160) day negotiation window under Section 252 of the Act. If the Parties reach agreement, this Agreement will terminate on the date specified in the notice or on the date the Agreement is approved by the Commission, whichever is later. If the Parties arbitrate, this Agreement will terminate when the new Agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses.

## **5.3 Proof of Authorization**

5.3.1 Each Party shall be responsible for obtaining and having in its possession Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all applicable laws and rules and shall be subject to any penalties contained therein.

## **5.4 Payment**

5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) calendar days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a business day, the payment shall be due the next business day.

5.4.2 One Party may discontinue processing orders for the failure of the other party to make full payment for the relevant service, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar days following the payment due date. The billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.3 The billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar days following the payment due date. The billed Party will pay the applicable reconnect charge set forth on Exhibit A required to reconnect each resold end user line disconnected pursuant to this paragraph. The billing Party will notify the billed Party in writing at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business day notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant service. Additionally, the billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the nonrecurring charges or monthly billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date identifying the amount, reason and rationale



of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, and the dispute is resolved in favor of the disputing Party, the billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or commission rules.

5.4.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the billing Party due to a previous nonpayment situation, the billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission regulations. Cash deposits and accrued interest will be credited to the billing Party's account or refunded, as appropriate, upon the earlier of the two (2) year term or the

establishment of satisfactory credit with the billing Party, which will generally be one full year of timely payments of undisputed amounts in full by the billed Party. Upon a material change in financial standing, the billed Party may request and the billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 The billing Party may review the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 Each Party shall be responsible for notifying its End-User Customers of any pending disconnection of a non-paid service by the billed Party, if necessary, to allow those customers to make other arrangements for such nonpaid services.

## **5.5 Taxes**

5.5.1 Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## **5.6 Insurance**

5.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the premises. 5.6.2 Each Party will initially provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificate(s) upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by the other Party; and (4) acknowledge severability of interest/cross liability coverage.

## **5.7 Force Majeure**

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

## **5.8 Limitation of Liability**

5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount

that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No.

5.8.3 Intentionally Left Blank

5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for willful misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 CLEC is liable for all fraud associated with service to its customers. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless such fraud is the result of any intentional act of Qwest. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's customers, Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.

## **5.9 Indemnity**

5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

5.9.1.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

5.9.1.2 In the case of claims or loss alleged or incurred by an end user of either Party arising out of or in connection with services provided to the end user by the Party, the Party whose end user alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors,

employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party.

#### 5.9.1.3 Reserved for Future Use

5.9.1.4 For purposes of Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS splitter: "end user" means the DSL provider's end user for claims relating to DSL and the voice service provider's end user for claims relating to voice service.

#### 5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

5.9.2.2 If the indemnifying Party wishes to defend against such action, it shall give written notice to the indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

5.9.2.3 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

### 5.10 Intellectual Property

5.10.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its affiliates; 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC" is a "Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than Qwest services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause end users to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes end user confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is

not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective Owners. The Parties shall comply with all applicable law governing Marks worldwide and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

## **5.11 Warranties**

5.11.1 Except as expressly set forth in this agreement, the Parties agree that neither Party has made, and that there does not exist, any warranty, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose and that all products and services provided hereunder are provided "as is," with all faults.

## **5.12 Assignment**

5.12.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control without the consent of the other Party, provided that the performance of this Agreement by any such assignee is guaranteed by the assignor. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

### **5.12.2 Intentionally Left Blank**

5.12.3 Nothing in this section is intended to restrict CLEC's rights to opt into Interconnection Agreements under § 252(i) of the Act.



### **5.13 Default**

5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

### **5.14 Disclaimer of Agency**

5.14.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

### **5.15 Severability**

5.15.1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

### **5.16 Nondisclosure**

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans and user specific, facility specific, or usage specific information, other than end user information communicated for the purpose of providing directory assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written

notification within thirty (30) days after the information is disclosed. The receiving Party shall, from that time forward, treat such information as Proprietary Information.

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

5.16.4.1 was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

5.16.4.2 is or becomes publicly known through no wrongful act of the receiving Party; or

5.16.4.3 is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

5.16.4.3 is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

5.16.4.4 is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or

5.16.4.5 is approved for release by written authorization of the disclosing Party; or

5.16.4.6 is required to be disclosed by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties

agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 CLEC forecasts provided to Qwest and forecasting information disclosed by Qwest to CLEC shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Qwest will use aggregated CLEC forecast information to fulfill regulatory filing requirements and as required to fulfill its obligations under this SGAT. In no case shall Qwest disclose aggregated information if such disclosure would, by its nature, reveal individual CLEC forecast information. Also, in no case shall Qwest provide access to this information to its retail marketing, sales or strategic planning personnel.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

## **5.17 Survival**

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## **5.18 Dispute Resolution**

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive, remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar days after the Resolution Request pursuant to the terms of Section 5.18.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators knowledgeable about the telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the

American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 5.18. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty eight (48) hours of the determination to arbitrate.

5.18.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 5.18.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

#### 5.18.3.3 Arbitrator's Decision.

5.18.3.3.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

5.18.3.3.2 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

5.18.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or confidential information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or confidential information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided however that the Party seeking to disclose the information shall first provide fifteen (15) calendar days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

5.18.8 This Section does not apply to any claim, controversy or dispute between the Party's, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with applicable federal law and the state law of Arizona. It shall be interpreted solely in accordance with applicable federal law and the state law of Arizona.

## **5.20 Responsibility for Environmental Contamination**

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for

which the indemnifying Party is responsible under applicable law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

## 5.21 Notices

5.21.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, or by email were specified in this Agreement to Qwest and CLEC at the addresses shown below

Qwest Corporation  
Director Interconnection Compliance  
1801 California, Room 2410  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

With copy to:  
Qwest Law Department  
Attention: Corporate Counsel, Interconnection  
1801 California Street, 49th Floor  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

and to CLEC at the address shown below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section 5.21.

## **5.22 Responsibility of Each Party**

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

## **5.23 No Third Party Beneficiaries**

5.23.1 The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

## **5.24 Referenced Documents**

5.24.1 All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Qwest practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Qwest practice, or publication of industry standards. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.

## **5.25 Publicity**

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.



## **5.26 Executed in Counterparts**

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

## **5.27 Compliance**

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. *Without limiting the foregoing*, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## **5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994**

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance Law Enforcement Act of 1994 (CALEA). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

## **5.29 Cooperation**

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

## **5.30 Amendments**

5.30.1 Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and *proposed language changes*. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

## **5.31 Entire Agreement**

5.31.1 This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between Qwest and CLEC and *supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.*

### **5.32 Reserved for Future Use**

## **Section 11.0 - NETWORK SECURITY**

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or end users, or their property as it employs to protect its own personnel, end users and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of telecommunications transmissions between end users during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any end user at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Parties' telecommunications networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-U S WEST-SECURE. In cases of emergency, CLEC shall call 911 and 1-888-U S WEST-SECURE.

11.14 CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Qwest and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 Qwest and CLEC employees, agents and vendors shall comply with Qwest central office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction may result in denial of access for that individual and may constitute a violation of the access rules, subjecting CLEC to denial of unescorted access. Qwest shall provide written notice within five (5) calendar days of the hazardous CLEC work activity to CLEC prior to denial of access and such notice shall include: 1) identification of the hazardous work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. CLEC will have five (5) calendar days to remedy any safety violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such

safety violation of which it has received notice within such five (5) calendar days following receipt of such notice, CLEC shall be denied unescorted access to the affected premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this SGAT, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds.

11.23 Qwest employees may request CLEC's employee, agent or vendor to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, equipment or services within the facility until the situation is remedied. Qwest shall provide immediate notice of the non-compliant work activity to CLEC and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. Within five (5) calendar days after such notice Qwest shall provide CLEC written notification of remedy for such non-compliant work activity. If such non-compliant work activities pose an immediate threat to the safety of Qwest employees, interference with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of Qwest's facilities, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution. If CLEC fails to correct any safety non-compliance within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct as soon as reasonably possible, Qwest may pursue immediate resolution by expedited Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification may be asked to vacate the premises and Qwest security will be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)  
800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available 7 days a week, 24 hours a day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) prior to gaining access into a central office after hours, for the purpose of disabling central office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, 900 and 976 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven days a week/twenty-four hours a day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or \*57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a twenty four (24) hour a day, seven (7) days a week contact for processing such requests, should they occur.

## **Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)**

### **12.1 Description**

12.1.1 Qwest has developed and shall continue to provide Operational Support System (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of the Co-Provider Industry Change Management Process (CICMP) set forth in Section 12.2.6.

12.1.2 Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing functions. For those functions with a retail analogue, such as pre-ordering and ordering and provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and provisioning of Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

### **12.2 OSS Support for Pre-Ordering, Ordering and Provisioning**

#### **12.2.1 Local Service Request (LSR) Ordering Process**

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards



Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre Ordering Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to customer service records (CSRs) for Qwest retail or resale end users. The information will include billing name, service address, billing address, service and feature subscription, directory listing information, and long distance carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 Facility availability, loop qualification and loop make-up information, including, but not limited to, loop length, presence of bridged taps, repeaters, and loading coils. This Section 12.2.1.4.1.7 shall apply only to CLEC orders for Unbundled Loops or Loop combinations.

12.2.1.4.8 A list of valid available CFAs for Unbundled Loops.

12.2.1.4.9 A list of 1-5 individual meet points or a range of meet points for shared Loops.

#### 12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use

12.2.1.5.2 Reserved for Future Use

12.2.1.5.3 When CLEC requests from Qwest, more than fifty (50) SecurIDs for use by CLEC customer service representatives at a single CLEC location, CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until

such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

**12.2.1.6 Access Service Request (ASR) Ordering Process**

**12.2.1.6.1** Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

**12.2.1.7 Facility Based EDI Listing Process.** Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

**12.2.1.8** Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CICMP process to consider any suggestions made by CLECs to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

**12.2.1.9 Ordering and Provisioning -** Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

**12.2.1.9.1** Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

**12.2.1.9.2** When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

**12.2.1.9.3** When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

**12.2.1.9.4** When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.8 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

12.2.1.9.9 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.10 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.11 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.12 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.10 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

## **12.2.2 Maintenance and Repair**

12.2.2.1 Qwest shall provide electronic interface gateways, including an electronic bonding interface and a GUI interface, for reviewing a customer's trouble history at a specific location, conducting testing of a customer's service where applicable, and

reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

### **12.2.3 Interface Availability**

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows in the IMA GUI.

### **12.2.4 Billing**

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

### **12.2.5 Outputs**

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

#### **12.2.5.1 Bills**

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating. 12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges

plus a summary of any usage charges. These bills are segmented by product, LATA, billing account number (BAN) and bill cycle.

#### 12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given day as captured or recorded by the network switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in Alliance for Telecommunication Industry Solution (ATIS) standard (Electronic Message Interface) EMI format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale; and
- b) Unbundled Switch Port.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the end user has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop;
- d) Unbundled Line-side Switch Port; and
- e) UNE-P for POTS.

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop;
- d) Unbundled Line-side Switch; and
- e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use. Qwest will post the transmission method/media types available for these mechanized records on its website.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

- a) SAG provides Address and Serving Central Office Information.
- b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

## **12.2.6 Change Management**

Qwest agrees to maintain a change management process, known as the Co-Provider Industry Change Management Process (CICMP), that is consistent with industry guidelines, standards and practices. Qwest and CLEC shall participate in discussions of OSS development in CICMP. The CICMP shall: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), release notifications (RN), systems release life cycles, and communications; (ii) provide a forum for CLECs as an industry to discuss and prioritize CLEC-initiated and Qwest-initiated CRs; (iii) develop a mechanism to track and monitor CRs and RNs; and (iv) establish communication intervals where appropriate in the process. Qwest will inform CLECs through the CICMP of all planned changes to Qwest software, local interconnection products, business processes and Technical Publications, including additions, deletions, or changes which affect any document or information CLEC receives from Qwest or any document or information Qwest sends CLEC. Qwest will seek CLEC input on the planned changes and will report such consideration in a timely manner. Through the CICMP, Qwest will give notice of the

establishment of new OSS interfaces and the retirement of OSS interfaces. Qwest will maintain an escalation process so that CICMP issues can be escalated to a Qwest representative authorized to make a final decision.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be based on regulatory obligations as dictated by the FCC or Commissions and, as time permits, the agreed upon changes requested by the CLEC Industry Change Management Process (CICMP). Qwest will provide to CLEC the features list for modifications to the interface. Specifications for interface modifications will be provided to CLEC three (3) weeks prior to the release date.

#### **12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces**

12.2.7.1 Before any CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

**12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces** - Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLECs demonstrate the ability to generate correct transactions for the new release. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

#### **12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces**

12.2.9.1 If using the GUI interface, CLEC will take reasonable efforts to train CLEC personnel on the GUI functions that CLEC will be using.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to Controlled Production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment – Qwest's stand-alone testing environment will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The Stand-Alone Testing Environment provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. Stand-Alone Testing uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All Stand-Alone test *pre-order queries and orders* are subjected to the same edits as production pre-order and order transactions. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of account information valid in Qwest production systems. All interoperability pre-order queries and orders are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production



requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the EDI interface. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel if technically feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.4.2 Intentionally Left Blank

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, if technically feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC must complete the re-certification and migration to a new EDI release within six (6) months of the deployment of the new release. CLEC may not need to certify to every new EDI release, however, CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two months after the implementation of the next release. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two months after the next release implementation may continue certifying additional products and activities until two months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the interoperability environment before two months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 Reserved for Future Use

12.2.9.9 Reserved for Future Use

12.2.9.10 CLEC will use all reasonable efforts and provide sufficient support and personnel to ensure that issues that arise in migrating to a new release of the IMA interface are handled in a timely manner.

## 12.2.10 CLEC Support

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via training, documentation and CLEC Help Desk.

### 12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with

relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLECs is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site. Qwest will provide an Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery On-going and one-time OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any ongoing or one-time OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

## **12.3 Maintenance and Repair**

### **12.3.1 Service Levels**

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Qwest provides for itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner Qwest provides for its retail services..

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to itself, its end user customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

### **12.3.2 Branding**

12.3.2.1 Qwest shall use unbranded maintenance and repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded maintenance and repair forms. Qwest may not unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

### **12.3.3 Service Interruptions**

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring carriers involved in its services; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the Impaired Party) shall promptly notify the Party causing the Impairment of Service (the Impairing Party) of the nature and location of the problem. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting CLECs as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

#### 12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, or Point of Interface. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the End User Customers side of the Demarcation Point. If the trouble is on the End User Customers side of the Demarcation Point, and the CLEC authorizes Qwest to repair trouble on the CLECs behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) days, Maintenance of Service charges shall not apply.

#### 12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the end user's demarcation point) for CLEC or its end users.

#### 12.3.6 Testing/Test Requests/Coordinated Testing

12.3.6.1 Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customer, its Affiliates, or any other party.

12.3.6.2 Prior to Qwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User, Qwest must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with

any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Qwest's portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner Qwest does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including central office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.

### **12.3.7 Work Center Interfaces**

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

### **12.3.8 Misdirected Repair Calls**

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End users of CLEC shall be instructed to report all cases of trouble to CLEC. End users of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

### 12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. . This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain proprietary information such as customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

### 12.3.10 Protective Maintenance

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible of pending maintenance activity. Qwest shall provide notice of potentially CLEC customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any Services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

### 12.3.11 Hours of Coverage

12.3.11.1 Qwest's repair operation is seven days a week, 24 hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

### 12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than 3 troubles in a rolling 30 day period, pursuant to Section 12.2.2.1.

#### 12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines and designed service circuits, Qwest is responsible for all maintenance and repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC customer premises without prior CLEC authorization. For dispatch to the CLEC customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

12.3.13.4 Intentionally Left Blank

#### 12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the electronic bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

#### 12.3.15 Intervals/Parity



12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

#### 12.3.16 Jeopardy Management

12.3.16.1 Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed.. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

#### 12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its end user trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC may employ similar techniques in its centers.

#### 12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually-reported trouble, Qwest will inform CLEC of repair completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

#### 12.3.19 End User Interface Responsibilities

12.3.19.1 CLEC will be responsible for all interactions with its end users including service call handling and notifying its end users of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC end users will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC customers.

#### 12.3.20 Repair Call Handling

12.3.20.1 Manually-reported repair calls by CLEC to Qwest will be answered with the same quality and speed as Qwest answers calls from its own End User Customers.

#### 12.3.21 Single Point of Contact

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven days a week, twenty-four hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

#### 12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

#### 12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major switch maintenance activities off-hours, during certain "maintenance windows". Major switch maintenance activities include switch conversions, switch generic upgrades and switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 a.m. Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., Mountain Time. Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Reserved For Future Use.

12.3.23.4 Planned generic upgrades to Qwest switches are included in the ICONN database, available to CLEC via Qwest's Web site.

#### 12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one switch and its replacement with another. Generic switch software or hardware upgrades, the addition of switch line and trunk connection hardware and the addition of capacity to a switch do not constitute switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the switch ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a switch or frame conversion planned day of cut-over to the replacement frame(s) or switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A switch or frame conversion embargo is the time period that the switch or frame trunk-side facility connections are frozen to facilitate conversion from one switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for trunk-side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for switch or frame trunk-side facility augments to capacity or changes to switch or frame trunk-side facilities must be issued by CLEC with a due date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject switch or frame trunk-side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's due date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For switch and trunk-side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) days before the Conversion Date.

12.3.24.4.3 For switch and trunk-side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old switch or frame to the new switch or frame, and sixty (60) days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until 5 days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs

shall be placed, and the embargo period shall extend from 60 days prior to the Conversion Date until 5 days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

**12.3.24.6 Switch Embargo Period.** During switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the trunk side of the switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old switch to the new switch on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until five (5) days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) days prior to the Conversion Date until five (5) days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

**12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs.** Switch and frame conversion quiet periods are the time period within which LSRs may not contain due dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, billing change orders for non-switched products, and emergency orders.

**12.3.24.7.1** LSRs of any kind issued during switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the switch or frame conversion. LSRs of any kind issued during the switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

**12.3.24.7.2** The quiet period for switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion and is identified in the ICONN database.

**12.3.24.7.3** The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion.

**12.3.24.7.4** LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a due date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

**12.3.24.7.5** LSRs requesting disconnect activity issued during the quiet period, regardless of requested due date, will be processed after the quiet period

expires.

12.3.24.7.6 CLEC may request a due date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the day prior to the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a due date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the day prior to the scheduled LSR due date until 12 noon Mountain Time the day after the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic switch software and hardware upgrades are not subject to the switch conversion embargoes or quiet periods described above. If such generic switch or software upgrades require significant activity related to translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such switch hardware additions.

## Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other Interconnection Agreement, Tariff or otherwise defined

by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the Processing Fee specified in Exhibit A of this Agreement. Qwest will refund one-half of the Processing Fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of Interconnection or access;

17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar days, but in no case later than the end of such twenty-one (21) day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a Request for an Interconnection, an Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by that CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections (a) through (f) of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data

available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.



## Section 18.0 - AUDIT PROCESS

18.1 For purposed of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of the books, records, and other documents used in the billing process for services performed, including, without limitation, reciprocal compensation and facilities provided under this Agreement.

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two Audits requested by each Party under this Agreement in any 12-month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously *uncorrected net variances, inaccuracies or errors in invoices* in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least 24 months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is

developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the audited Party shall pay all of the Auditing Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the billing to the auditing Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) days after the Parties receipt of the final audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process: (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the Audit. Information provided in an Audit or Examination may only be reviewed by individuals with

a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

## **Section 19.0 - CONSTRUCTION CHARGES**

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to unbundled loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to unbundled loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to unbundled loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of end users and without discrimination among the various carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

## **Section 20.0 - SERVICE PERFORMANCE**

Qwest is currently developing performance measures in a process created by the Regional Oversight Committee (ROC). Qwest will amend this Agreement when the ROC process is complete to incorporate all aspects of the ROC final decision pertaining to Service Performance. Qwest will also amend this Agreement when the Commission completes its Performance Assurance Plan that is being conducted separately from the ROC.

## EXHIBIT F

1. The Special Request Process shall be used for the following requests:
  - 1.1 Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.
  - 1.2 Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor.
  - 1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:
    - 1.3.1 that is made up of UNEs that are defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;
    - 1.3.2 that is made up of UNEs that are ordinarily combined in the Qwest network.
  - 1.4 Requesting an Unbundled Network Element that has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product, including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDIT, EEL between OC-3 and OC-192 and new varieties of subloops.
  - 1.5 Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Qwest will consider the BFR time frame to have started upon receipt of the original Special Request application form.
2. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website.
3. Qwest shall acknowledge receipt of the Special Request within two (2) business days of receipt.
4. Qwest shall respond with an analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

## Exhibit I – Individual Case Basis (ICB)

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Qwest.
2. ICB Rate Intervals
  - 2.1 For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.
  - 2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Qwest shall provide CLEC with an ICB quote within the stated specific intervals:
    - 2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.
    - 2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Exhibit F.
    - 2.2.3 Quotes for all collocation requests, regardless of the type of collocation, shall be provided in accord with the Section 8 interval.
    - 2.2.4 Quotes for all Field Connection Point requests shall be provided in accord with Section 9.3.
    - 2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.
  - 2.3 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Qwest shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Qwest shall request the release of vendor cost information when Qwest communicates with the vendor(s) when Qwest seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Qwest under the non-disclosure sections of this Agreement.
3. ICB Provisioning Intervals

- 3.1 For those products and services provided pursuant to this SGAT that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Qwest representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.



EXHIBIT L  
ADVICE ADOPTION LETTER

Director of Interconnection Compliance

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

\_\_\_\_\_

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ (CLEC) hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

CLEC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT M  
INTERIM ADVICE ADOPTION LETTER

Director of Interconnection Compliance

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an interim amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

Qwest acknowledges that CLEC believes that the rates, terms and conditions for the Qwest New Product should be altered and that CLEC enters into this Interim Advice Adoption Letter with the express intention to renegotiate the rates, terms and conditions associated with the Qwest New Product pursuant to the terms of Section 1.7.1.2 of the SGAT. CLEC enters into this Interim Advice Adoption Letter without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Advice Adoption Letter under the Interconnection Agreement, the Act, FCC or state Commission rules.

CLEC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Qwest Multi State General Terms & Conditions "frozen" SGAT lite

### **Section 1.0 - GENERAL TERMS**

1.1 This Statement of Generally Available Terms and Conditions ("SGAT") ~~for Interconnection, unbundled network elements, Ancillary Services, and Resale of Telecommunications Services is filed by U.S. WEST Communications, Inc. ("U.S. WEST"), a Colorado Corporation with offices at 1801 California Street,~~ (SGAT) for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services is filed by Qwest Corporation (Qwest), a Colorado Corporation with offices at 1801 California Street, Denver, Colorado 80202, Denver, Colorado 80202, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling U.S. WEST's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 ~~If this document is being used as the basis for negotiations of an Interconnection Agreement, it is between~~ ("Competitive Local Exchange Carrier" or "CLEC") a ~~corporation and U.S. WEST Communications ("U.S. WEST"), a Colorado corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling U.S. WEST's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.~~

1.3 ~~This Agreement sets forth the terms, conditions and pricing under which U.S. WEST will offer and provide to any requesting CLEC network Interconnection, access to unbundled network elements, Ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties are providing local exchange service at that time, and for which U.S. WEST is the incumbent Local Exchange Carrier within the state of Idaho for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.~~

1.4 ~~Individual CLECs may adopt this SGAT, in lieu of entering into an individual interconnection agreement, by signing the Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT to U.S. WEST, pursuant to the notification provision of this SGAT contained in Section 5.21. Upon adoption of the SGAT by CLEC, the SGAT becomes an interconnection agreement between U.S. WEST and CLEC.~~

1.5 ~~This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual interconnection agreement with U.S. WEST or adopting an existing approved interconnection agreement between U.S. WEST and another CLEC pursuant to Section 252(i) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect U.S. WEST's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.~~

1.6 ~~U.S. WEST may modify this SGAT prior to the date it is approved or permitted to go into effect. If U.S. WEST files a modification, the section modified shall be considered withdrawn, and the section as modified will be approved or permitted to go into effect pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of the Schedule for~~

~~Review set forth in section 252(f) of the Act, the sixty-day timeframe for this SGAT to take effect shall commence from the filing of this SGAT and shall not be affected by the filing of any modification.~~

~~1.7 Following the date this SGAT is approved or allowed to take effect, U-S-WEST may file amendments to this SGAT, which shall be approved or permitted to take effect pursuant to the Schedule for Review set forth in Section 252(f) of the Act. At the time any amendment is filed, the section amended shall be considered withdrawn, and no CLEC may adopt the section considered withdrawn following the filing of any amendment, even if such amendment has not yet been approved or allowed to take effect.~~

~~1.8 If this document is being used as the basis for negotiations of an Interconnection Agreement, U-S-WEST and CLEC mutually agree as follows: pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.~~

## 1.2 Intentionally Left Blank

1.3 This SGAT sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local exchange service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of \_\_\_\_\_ for purposes of providing local Telecommunications Services. This SGAT is available for the term set forth herein.

1.4 Individual CLECs may adopt this SGAT, in lieu of entering into an individually negotiated Interconnection agreement, by signing the Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT to Qwest, pursuant to the notice provision of this SGAT contained in Section 5.21. The date on which Qwest receives an executed copy of this SGAT shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Qwest shall notify CLEC of the Effective Date pursuant to notice provisions. The Parties shall satisfy all state Interconnection agreement filing requirements.

1.5 This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual Interconnection agreement with Qwest, or adopting an existing approved Interconnection agreement between Qwest and another CLEC pursuant to Section 252(f) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect Qwest's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.

## 1.6 Intentionally Left Blank

1.7 Once this SGAT is approved or permitted to go into effect, any amendment to the SGAT by Qwest will be accomplished through Section 252 of the Act. When Qwest files an amendment to the SGAT with the Commission, Qwest shall provide notice of such filing through the Co-Provider Industry Change Management Process (CICMP). Qwest shall also request that the Commission notify all interested parties of the filing. In addition, any amendment to the SGAT filed by Qwest shall have no effect on the SGAT (either to withdraw or replace effective

provisions or to add provisions) until such amendment is approved by the Commission or goes into effect by operation of law. Once CLEC executes Section 22 and delivers a signed copy to Qwest pursuant to the notice provisions of this SGAT, the currently effective SGAT will become the Interconnection Agreement between the CLEC and Qwest (this Agreement), and shall be subject to the same rules and laws as other Interconnection Agreements in effect in this state. Once this SGAT becomes the Interconnection Agreement between CLEC and Qwest, this Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the CICMP. CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options:

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, CLEC agrees to abide by those terms and conditions on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit L) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates, and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 Because this SGAT is Qwest's standard contract offer, CLECs with a current Interconnection Agreement may opt into, through Section 252(l) of the Act, any provision of the SGAT by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, Qwest may require CLEC to accept legitimately related provisions to ensure that the provision retains the context set forth in the SGAT. At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are legitimately related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are legitimately related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not legitimately related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.3 If Qwest has identified additional provisions that Qwest believes are legitimately related and has specified provisions in the proposed amendment to which those provisions are not legitimately related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are legitimately related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorney's fees, and shall share equally in the fees and

expenses of the arbitrator. The arbitration proceedings shall occur in the metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorney's fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorney's fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission.



## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1- This Agreement (Agreement) includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including U.S. WEST or other third party and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any offerings, guides or practices), statute, regulation, rule or tariff applies to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

~~2.2- The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). Among the Existing Rules are the results of arbitrated decisions by the Commission which are currently being challenged by U.S. WEST or CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1990. Many of the Existing Rules, including rules concerning which Network Elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme Court opinion. Among the Existing Rules are the FCC's orders regarding BOCs' applications under Section 271 of the Act. U.S. WEST is basing the offerings in this Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by U.S. WEST concerning the interpretation or effect of the Existing Rules or an admission by U.S. WEST that the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop U.S. WEST or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. This Section 2.2 shall be considered part of the rates, terms and conditions of each interconnection, service and network element arrangement contained in this Agreement, and this Section 2.2 shall be considered legitimately related to the purchase of each interconnection, service and network element arrangement contained in this Agreement.~~  
reference to any statute, regulation, rule or Tariff applies to such statute, regulation, rule or Tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not

limited to state rules, regulations, and laws, as of the date hereof (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed, or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to agree on an amendment during the 60 day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

### **Section 3.0 - ~~IMPLEMENTATION SCHEDULE~~CLEC INFORMATION**

3.1 Except as otherwise required by law, ~~U-S WEST~~Qwest will not provide or establish Interconnection, ~~unbundled network elements, Unbundled Network Elements,~~ ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. ~~The date on which CLEC signs and delivers an executed copy of this Agreement, in accordance with Section 1, shall hereafter be referred to as the "Effective Date" of the Agreement between U-S WEST and CLEC.~~ Thereupon, the Parties shall complete ~~U-S WEST's~~Qwest's "CLEC Questionnaire," and negotiate an interconnection implementation schedule as it applies to CLEC's obtaining of Interconnection, ~~unbundled network elements, Unbundled Network Elements,~~ ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New CLEC Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request - LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

~~U-S WEST's "CLEC Questionnaire."~~3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will then be used to:

Determine geographical requirements;

Identify CLEC ~~Identification Codes;~~identification codes;

Determine ~~U-S WEST~~Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute ~~U S WEST~~Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

~~3.3 Prior to placing any orders for services under this Agreement, the Parties will finalize an interconnection implementation schedule. Subject to the terms and conditions of this Agreement, each Party shall exercise reasonable efforts to adhere to the interconnection implementation schedule.~~

~~3.4 CLEC will provide an initial two year forecast prior to placing any orders for service under this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to U S WEST on a quarterly basis. During the remaining term of this Agreement, CLEC will provide updated forecasts from time to time, as requested by U S WEST. The information provided pursuant to this paragraph shall be considered Proprietary Information under the Nondisclosure Section 5.16 of this Agreement. The initial forecast will minimally provide:~~

~~3.4.1 The date service will be offered (by city and/or state);~~

~~3.4.2 The type and quantity of service(s) which will be offered;~~

~~3.4.3 CLEC's anticipated order volumes; and~~

~~3.4.4 CLEC's key contact personnel.~~

Section 4.0 - DEFINITIONS  
3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new CLEC Questionnaire; however, CLEC will update its CLEC Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this agreement, which may include an amendment pursuant to Section 1.7.1.

3.3 Intentionally Left Blank

3.4 Intentionally Left Blank

## Section 4.0 – DEFINITIONS

4.1—“Access Service Request” or “ASR” means the industry standard guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between the CLEC and U.S. WEST Qwest for Local Interconnection Service.

4.2—“Access Services” refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

“Access Tandem Switch” is a switch used to connect End Office Switches to interexchange Carrier switches. Qwest’s Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA.

4.3—“Act” means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Idaho Public Utilities Commission.

“Advanced Intelligent Network” or “AIN” is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

“Advanced Services” refers to high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video telecommunications using any technology.

“Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent (10%).

“AMI T1” is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code. AMI T1s are well recognized as Disturbers.

“Applicable Law” means all laws including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

4.4—“Application Date” or “APP” means the date the CLEC provides U.S. WEST a firm commitment and sufficient information to provide service. CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

4.5—“Automatic Number Identification” or “ANI” means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

4.6—“Basic Exchange Features” are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection. “ATIS” or “Alliance for Telecommunications Industry Solutions” is a North American

telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability for telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein as baseline requirements documentation.

"Automatic Location Identification" or "ALI" is a the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DMS" is a system of manual procedures and computer programs used to create, store, sort, manipulate and update the data required to provide Selective Routing and ALI.

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer information (including name, service address, telephone number, and sometimes special information from the local service provider) used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automated Message Accounting" or "AMA" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Number Identification" or "ANI" is the billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit switch routing table or system.

4.7 — "Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then is shall have the meaning set forth therein, a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

4.8 — ~~"Bona Fide Request" or "BFR" means a request for a new interconnection or unbundled element not already available in this Agreement for the provision of local telecommunications services.~~

4.9 ~~"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another end user's Basic Exchange Telecommunications Service line.~~

4.10 ~~"Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party. Reference U.S. WEST Technical Publication 77342.~~

4.11 ~~"Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:~~

4.11.1 ~~"End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and~~

4.11.2 ~~"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switches shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same geographic area as U.S. WEST's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic.~~

4.12 ~~"Collocation" is an arrangement where space is provided in a U.S. WEST Wire Center for the placement of CLEC's equipment to be used for the purpose of interconnection or access to U.S. WEST unbundled network elements. U.S. WEST offers six Collocation arrangements: Virtual Collocation, Caged Physical Collocation, Cageless Physical Collocation Shared, Adjacent, and Interconnection Distribution Frame Collocation.~~

4.13 ~~"Commission" means the Idaho Public Utilities Commission.~~

4.14 ~~"Common Channel Signaling" or "CCS" means a method of digitally transmitting call set up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.~~

4.15 ~~"Competitive Local Exchange Carrier" or "CLEC" refers to a party that has submitted a request pursuant to Sections 1 and 3 of this Agreement, to obtain interconnection, access to unbundled network elements, ancillary services, or resale of Telecommunications Services pursuant to the terms of this Agreement. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier ("ILEC").~~

4.16 ~~"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete. "Bill and Keep" is as defined in the FCC's Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic). Bill and Keep is an arrangement where neither of two (2) interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Bill and Keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks.~~



"Bill Date" means the date on which a billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of twenty five (25) color-coded twisted pairs wrapped in colored tape within a cable.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact-based consideration of geography and function should be used to classify any switch. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"CLC" or "Carrier Liaison Committee" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subsuming fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subsuming forums. OBF and NIM publish business process rules for their respective areas of concern.

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation - Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the \_\_\_\_\_.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" means an intra-Wire Center channel of the appropriate bandwidth and media connecting separate pieces of Telecommunications Equipment, including jumpers and Intraoffice cables.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not

limited to, automatic callback, automatic recall, calling number delivery, customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" means telecommunications equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data " means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Day" means calendar days unless otherwise specified

"Dedicated Transport" is a Qwest provided digital transmission path between locations designated by CLEC to which a CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest wire centers, Qwest End Office Switches, and Qwest Tandem Switches. The path may operate at DS-1 or higher transmission speeds.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, end user, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Digital Cross-Connect System" or "DCS" is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

4.17 "Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

4.18 "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

4.19 "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

~~"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signal (demultiplexing); The DSLAM must be located at the end of a 4.20 "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of a subscriber's transmitted information; that provide the subscriber with different or restructured information; or involve end-user interaction with stored information.~~

~~4.21 "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non billable, sample, settlement and study data. EMR format is contained in BR 010-200-010 CRIS Exchange Message Record, a Bellcore document that defines industry standards for exchange message records.~~

~~4.22 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as defined by U S WEST's then current EAS/local serving areas, and as determined by the Commission.~~

~~4.23 "Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.~~

~~4.24 "Firm Order Confirmation Date" or "FOC" means the notice U S WEST provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by U S WEST for the provisioning of the service requested.~~

~~4.25 "Integrated Digital Loop Carrier" means a subscriber loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.~~

~~4.26 "Interconnect & Resale Resource Guide" is a U S WEST document that provides information needed to request services available under this Agreement. It is available on U S WEST's Web site:~~

~~<http://www.uswest.com/carrier/guides/interconnect/index.html>.~~

~~4.27 "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.~~

~~4.28 "Interexchange Carrier" (IXC) means a carrier that provides interLATA or IntraLATA Toll services.~~

~~4.29 "Internet Related Traffic" refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.~~

~~4.30 "Exchange Access (IntraLATA Toll) is defined in accordance with U S WEST's current intraLATA toll serving areas, as determined by U S WEST's state and interstate tariffs and excludes toll provided using Switched Access purchased by an IXC.~~

~~4.31 "Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.~~

~~4.32 "Local Interconnection Service (LIS) Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's switch location or Point of Interconnection (POI) to the U S WEST Serving Wire Center. An Entrance Facility may not extend beyond the area served by the U S WEST Serving Wire Center.~~

~~4.33 "Local Interconnection Service (LIS)" is a terminating, trunk-side service provided between the POI of CLEC's network and U S WEST's network for the purpose of completing calls from CLEC's end-user customers to U S WEST's end user customers. Exchange Service (EAS/Local) calls begin and end within a Local Calling Area or Extended Area Service (EAS) area which has been defined by the Commission. Trunking connections for these local calls may exist between CLEC and U S WEST's End Offices or Local Tandem. Exchange Access (IntraLATA and Toll) or Jointly Provided Switched Access calls are completed with trunking connections to the access tandem.~~

~~4.34 "Local Loop Transmission" or "Loop" or "Unbundled Loop" means the entire transmission path which extends from the network interface device or demarcation point at an end-user's premises to the Main Distribution Frame or other designated frame or panel in a Party's Wire Center which serves the end user.~~

~~4.35 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.~~

~~4.36 "Main Distribution Frame" or "MDF" means a U S WEST distribution frame (e.g., COSMIC frame) used to connect U S WEST cable pairs and line and trunk equipment terminals on a U S WEST switching system.~~

~~4.37 "MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by Bellcore as Special Report SR-BDS-000883, contains the recommended guidelines for the billing of an Access Service.~~

4.38 ~~MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document establishes recommended guidelines for processing orders for Access Service.~~

4.39 ~~"Meet Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service including phone to phone voice interexchange traffic that is transmitted over a carrier's packet-switched network using protocols such as TCP/IP to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.~~

4.40 ~~"Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.~~

4.41 ~~"North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.~~

4.42 ~~"NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.~~

4.43 ~~"Party" means either U S WEST or CLEC and "Parties" means U S WEST and CLEC.~~

4.44 ~~"Plant Test Date" or "PTD" means the date acceptance testing is performed with the copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).~~

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Listings Information" is information that includes the listed names of End User Customers of a Telecommunications Carrier and such End User Customer's published telephone numbers, addresses, and area code, as may be contained in Qwest's or its Affiliates' Directory Assistance Database or any other Directory format.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"Electronic Bonding" is a method of OSS Interoperability defined and approved by ATIS for trouble administration that uses GDMO data models and CMIP/CMISE for secure transport.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more carriers.

"Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with different or restructured information; or involve end-user interaction with stored information.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access (IntraLATA Toll)" is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as determined by the Commission.

"Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.

"FCC" means the Federal Communications Commission.

"Fiber Meet" is a joint Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface at an agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services; provided however that CLEC may connect UNE Combinations to Qwest Directory Assistance and Operator Services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the



service requested.

"Hub Provider" means an entity that (i) provides common channel signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other, or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Information Service" is as defined in the Telecommunications Act of 1996 and FCC Order on Remand and Report and Order in CC Docket 99-68 and includes ISP-bound traffic.

"Information Services Access" means the offering of access to Information Services Providers.

"Information Services Providers" or "ISPs" are providers of Information Services.

"INP" or "Interim Number Portability" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network, but does not comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23 (a).

"Integrated Digital Loop Carrier" means a subscriber Loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, services, or Unbundled Network Elements either as a result of negotiations and/or arbitration pursuant to pursuant to Section 252 of the Act. When a CLEC signs and delivers a copy of this SGAT to Qwest pursuant to the notice provision of the SGAT, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(f) of the Act.

"Interexchange Carrier" (IXC) means a carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately related" terms and conditions are those rates, terms, and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those that specifically relate to other interconnection, services or elements in the approved Interconnection Agreement. These rates terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service ore element. These terms and conditions would not include General Terms and Conditions to the extent that the CLEC's Interconnection Agreement already contains the requisite General Terms and Conditions.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXC's to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service (LIS) Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service (LIS)" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting

documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service Charges" are those charges that apply pursuant to the terms of this Agreement when a CLEC reports trouble. Maintenance of Service charges are set forth in Exhibit A.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges. Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two (2) or more LECs (including a LEC and a CLEC), or by one LEC in two (2) or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two (2) or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the carrier in the call routing process immediately preceding the terminating carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two (2) and four (4) seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Descriptions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of telecommunications

service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for maintenance and repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center" or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas: 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Ordering and Billing Forum" or "OBF" means the forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt

during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, and Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. Where technically feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

4.45 "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

4.46 "Port" means a line or trunk connection point on a central office Central Office switch but does not include switch features.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pca/>

4.47—"Proof of Authorization" ("POA"). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection of its local service provider. Section 5.3 of this Agreement lists acceptable forms of documentation. "Proprietary Information" shall have the same meaning as confidential information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

4.48—~~"Rate Center" means "Rate Center" identifies the specific geographic point (associated with one or more specific NPA-NXX codes and various Wire Centers), being used for billing and measuring Telecommunications Service. For example, a Rate Center will normally include several Wire Centers within its geographic area, with each and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLEC) for its provision of Telephone Exchange Services. The rate point is a geographic location identified by specific vertical Wire Center having one or more NPA-NXXs and horizontal (V&H) coordinates, which are used to measure distance sensitive end user traffic to/from the particular NPA-NXX designations with the specific Rate Center.~~

4.49—"Rate Center Area" is the geographic area within which ~~basic exchange services~~ Basic Exchange Services are provided for NPA-NXX designations associated with a particular Rate Center.

"Rating Point" means the V&H coordinates associated with a particular telephone number for rating purposes.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for

provisioning by the RFS date.

4.50—"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

4.51—"Reseller" is a category of local exchange "Remote Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network. If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

"Remote Premises" means all Qwest Premises as defined in 4.46(a), other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include, but are not limited to, controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. The transport to the Central Office or Serving Wire Center may be based on copper or fiber-based digital technologies.

that obtains dial tone and associated "Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services from another provider through the purchase of finished services for resale to its end users to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

4.52—"Scheduled Issued Date" or "SID" means the date the order is entered into U.S. WEST's Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

4.53—"Service Control Point" or "SCP" means a signaling end-point that acts as a database to provide information to another signaling end-point (i.e., "Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point or another SCP, for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with (SSP), performs subscriber or application-specific service logic on SCP and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that



can be programmed to create new Advanced Intelligent Network call processing services.

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

4.54—"Serving Wire Center" denotes the Wire Center from which dial tone for local exchange serviceLocal Exchange Service would normally be provided to a particular end-userCustomer premises.

4.55—"Service Date" or "SD" means the date service is made available to the end-userEnd User Customer. This also is referred to as the "Due Date."

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part ("MTP"), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part ("SCCP"), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part ("ISUP"), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part ("TCAP"), which provides for transfer of non-circuit related information between signaling points.

4.56—"Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages-("CCS") messages.

"Spectrum Compatibility" means the capability of two (2) Copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all loop lengths, model loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the loop in order to provide both voice and data over a single loop.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network.

Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, and Remote Switching Modules. Switches may be employed as a combination of End Office/Tandem Switches.

4.57—"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, Phone-to-Phone IP Telephony, 8XX access, and 900 access and their successors or similar Switched Access services. Switched Access traffic, as specifically defined in U.S. WEST's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

4.58—"Tariff" as used throughout this Agreement refers to U.S. WEST's interstate Tariffs and state Tariffs, price lists, price schedules and catalogs.

"Technically Feasible." Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

4.59—"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

4.60—"Telecommunications Services" means the offering of telecommunications for a fee

directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary transaction sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Unbundled Network Element" is a network element that has been defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access.

4.61—"Unbundled Network Element Platform (UNE-P)" – is ~~a pre-existing combination of unbundled network elements~~ Unbundled Network Elements, including Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including but not limited to single line residence, single line business, and PBX Trunks.

4.62 "UNE Combination" means ~~a pre-existing combination of legally binding and effective Section 251(c)(3) unbundled network elements that have been defined to meet the necessary and impair requirements of Section 251(d)(1).~~ UNE Combinations are provided to CLEC in its pre-existing combined state, on an "as is" basis, and at Section 252(d)(1) rates. ~~UNE combinations include UNE-P and Private Line Combinations.~~ "UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network as required by the FCC or Commission.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into

structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

4.63-----"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given ~~carrier's~~ Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located. ~~However, for purposes of Collocation service, Wire Center shall mean those points eligible for such connections as specified in the FCC Docket No. 91-141, and rules adopted pursuant thereto.~~

4.64—"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

4.65-----Terms not otherwise defined here, but defined in the Act, shall have the meaning defined there.

## Section 5.0 - TERMS AND CONDITIONS

### 5.1 General Provisions

~~5.1.1 Each Party shall use its best efforts to comply with the Implementation Schedule provisions that will be mutually agreed upon by the Parties.~~ Intentionally Left Blank

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users. ~~End User Customers.~~ In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

~~Each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either~~ 5.1.3.1. If such impairment is material and poses an immediate threat to the safety of either Party's employees, customers or the public or poses an immediate threat of a service interruption, that Party shall provide the other Party notice of such violation at the earliest practicable time.

immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates this provision or refuse to provide the same type of service if it reasonably appears that that particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other party shall provide written notice within five (5) calendar days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1.

The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

**5.1.4** Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

**5.1.5** The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

**5.1.6** Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

## **5.2 Term of Agreement**

**5.2.1** This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and on the date set forth in Section 1.4252 of the Act. The date on which CLEC submits a written request, pursuant to Section 3.4 of this Agreement, to obtain services pursuant to this Agreement shall hereafter be referred to as the "Effective Date" of 252 of the Act. This Agreement between CLEC and U.S. WEST. This Agreement shall be binding upon the Parties upon the Effective Date and for a term of two years and shall terminate on \_\_\_\_\_ for a term of three (3) years and shall expire three (3) years from the Effective Date.

**5.2.2** Upon expiration of the term of this Agreement, this Agreement shall continue in force and effect until terminated by either Party on one hundred sixty (160) days written notice to the other party. Party. The date of this notice will be the starting point for the one hundred sixty (160) day negotiation window under Section 252 of the Act. If the parties reach agreement, this Agreement will terminate on the date specified in the notice or on the date the agreement is approved by the Commission, whichever is later. If the Parties

arbitrate, this Agreement will terminate when the new ~~agreement~~ Agreement is approved by the Commission.

5.2.2.1 ~~Prior to the conclusion of the two-year term specified in Section 5.2.1 above, CLEC may obtain interconnection services under the terms and conditions of a then-existing Agreement SGAT or agreement to become effective at the conclusion of the two-year term or prior to the conclusion of the term if CLEC so chooses.~~

### 5.3 Proof of Authorization

5.3.1 ~~Where so indicated in specific sections of this Agreement, each~~ Each Party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA"). ~~POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained in the following ways:~~

~~5.3.1.1 The end user's written Letter of Authorization.~~

~~5.3.1.2 The end user's electronic authorization by use of an 8XX number.~~

~~5.3.1.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).~~  
~~(POA) as required by applicable federal and state law, as amended from time to time.~~

5.3.2 ~~The Parties shall make POAs available to each other upon request request in the event of an allegation of an unauthorized change in accordance with all applicable laws and rules. A charge of \$100.00 will be assessed if the POA cannot be provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.~~

~~rules and shall be subject to any penalties contained therein.~~

### 5.4 Payment

5.4.1 ~~Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) calendar days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a Business Day, business day, the payment shall be made the next Business Day due the next business day.~~

5.4.2 ~~U S WEST One Party may discontinue processing orders for the failure by CLEC of the other party to make full payment for the relevant service, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) days of the due date on CLEC's bill, calendar days following the payment due date. The billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other 5.4.3 U S WEST may disconnect for the failure by CLEC Party's non-compliance continues, nothing contained herein shall preclude the billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed~~

Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.3 The billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar days following the payment due date. The days of the due date on CLEC's bill. CLEC will pay the Tariff charge billed Party will pay the applicable reconnect charge set forth on Exhibit A required to reconnect each resold end user line disconnected pursuant to this paragraph. U.S. WEST. The billing Party will notify the billed Party in writing at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business day notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant service. Additionally, the billing Party will request a agreee deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or U.S. WESTQwest dispute, in good faith, any portion of the nonrecurring charges or monthly billing under this Agreement, the partiesParties will notify each other in writing within thirty (30)fifteen (15) calendar days of the receipt of such billing, following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and U.S. WESTQwest shall pay all undisputed amounts due. Both CLEC and U.S. WESTQwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies. If the resolved amount does not appear as a credit on the next invoice after resolution of the dispute, the resolved amount plus interest from the date of payment will be applied. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it not been paid on time. Similarly, in the event a party withholds payment for a disputed charge, and upon resolution of the matter it is determined that such payments should have been made, the billing party is entitled to collect interest on the withheld amount, subject to the above provisions.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed



charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, and the dispute is resolved in favor of the disputing Party, the billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or commission rules.

5.4.5 ~~U.S. WEST will determine CLEC's~~ Each Party will determine the other Party's credit status based on previous payment history with U.S. WEST or credit reports such as Dun and Bradstreet. If ~~CLEC a~~ Party has not established satisfactory credit with U.S. WEST or if ~~CLEC the~~ other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the Party is ~~U.S. WEST being~~ reconnected after a disconnection of service or discontinuance of the processing of orders by the billing Party due to a previous nonpayment situation, the billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or ~~charges before reconnection of service.~~ "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) period months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to ~~U.S. WEST, the~~ billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ~~ten (40)~~ thirty (30) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs regulations. Cash deposits and accrued interest will be credited to ~~CLEC's~~ the billing Party's account or refunded, as appropriate, upon the earlier of the two (2) year term or the establishment of satisfactory credit with the billing ~~U.S. WEST, Party,~~ which will generally be one full year of timely payments of undisputed amounts in full by ~~CLEC the~~ billed Party. Upon a material change in financial standing, the billed Party may request and the billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 ~~U.S. WEST~~ The billing Party may review ~~CLEC's~~ the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

~~5.4.9 CLEC agrees to inform end user in writing of~~ Each Party shall be responsible for notifying its End-User Customers of any pending disconnection by CLEC to allow end user of a non-paid service by the billed Party, if necessary, to allow those customers to make other arrangements for telecommunications services such nonpaid services.

## 5.5 Taxes

5.5.1 ~~Each Party purchasing services hereunder shall pay or otherwise be responsible for all~~ Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied-applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## 5.6 Insurance

5.6.1 ~~CLEC~~ Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of ~~B+XIII~~ B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by ~~CLEC~~ each Party hereunder. The limits of insurance shall not be less than \$1,000,000

each occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 ~~Comprehensive Business~~ automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the premises. ~~CLEC may elect to purchase business interruption and contingent business interruption insurance. U.S. WEST has no liability for loss of profit or revenues should an interruption of service occur.~~

5.6.2 ~~CLEC shall~~ Each Party will initially provide certificate(s) of insurance evidencing coverage, and annually thereafter within ten (10) calendar days of renewal of any coverage maintained pursuant to this Section thereafter will provide such certificate(s) upon request. Such certificates shall (1) name ~~U.S. WEST~~ the other Party as an additional insured under commercial general liability coverage as respects ~~U.S. WEST's~~ interests; (2) provide ~~U.S. WEST~~ thirty (30) calendar days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by ~~U.S. WEST~~; and ~~(4) provide the other Party; and (4) acknowledge severability of interest/cross liability coverage.~~

## 5.7 Force Majeure

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, ~~equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions, inability conditions~~ (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event") shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

## 5.8 Limitation of Liability

~~5.8.1 Except for losses relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, each Party shall be liable to the other for direct damages for any loss, defect or equipment failure including without limitation any penalty, reparation or liquidated damages.~~ 5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises, assessed by the Commission or under a Commission ordered agreement (including without limitation penalties or liquidated damages assessed as a result of cable cuts), resulting from the causing Party's conduct or the conduct of its agents or contractors.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

~~5.8.3 Except for indemnity obligations, or as otherwise set forth in this Section, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed, including without limitation direct damages for loss of or damaged to the CLEC's collocated equipment located within the collocation space.~~

result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No.

### 5.8.3 Intentionally Left Blank

5.8.4 -Nothing contained in this Section 5.8 shall limit either Party's liability to the other for willful or intentional misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 CLEC is liable for all fraud associated with service to its end-users and accounts. U S WEST customers. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of U S WEST or Qwest. Notwithstanding the above, if U S WEST or Qwest becomes aware of potential fraud with respect to CLEC's accounts, U S WEST customers. Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.

## 5.9 Indemnity

5.9.1 ~~With respect to third party claims, the Parties agree to indemnify each other as follows: The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:~~

~~5.9.1.1 Except for claims made by and users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, each~~ 5.9.1.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnatee") Indemnatee from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any other party or person, person or entity, for invasion of privacy, personal bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the indemnifying Party's performance, indemnifying Party's breach of applicable law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

~~5.9.1.2 Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party, then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional and malicious misconduct of the other Party.~~

~~5.9.1.3 If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim.~~

5.9.1.2 In the case of claims or loss alleged or incurred by an end user of either Party arising out of or in connection with services provided to the end user by the Party, the Party whose end user alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party.

5.9.1.3 Reserved for Future Use

**5.9.1.4** For purposes of this Section 5.9, Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS splitter: "claims made by end users or customers of one Party against the other Party" refers to claims relating to the provision of DSL services made against the Party that provides voice services, or claims relating to the provision of voice service made against the Party that provides DSL services; and "immediate provider of the Telecommunications Service to the end user or customer" refers to the Party that provides DSL service "end user" means the DSL provider's end user for claims relating to DSL services, and the Party that provides voice service provider's end user for claims relating to voice services. For purposes of this Section 5.9, "customer" refers to the immediate purchaser of the telecommunications service, whether or not that customer is the ultimate end user of that service.

**5.9.2** The indemnification provided herein shall be conditioned upon:

~~5.9.2.1~~ **5.9.2.1** The Indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification. Failure to so notify the indemnifying Party shall not relieve the indemnifying Party of any liability that the indemnifying Party might have, except to the extent that such failure prejudices the indemnifying Party's ability to defend such claim.

~~5.9.2.2~~ **5.9.2.2** If the indemnifying Party wishes to defend against such action, it shall give written notice to the indemnified Party of acceptance of the defense of such action. In such event, the indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the indemnifying Party does not accept the defense of the action, the indemnified Party shall have the right to employ counsel for such defense at the expense of the indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

~~5.9.2.3~~ **5.9.2.3** In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party. In the event the indemnified Party withholds consent, the indemnified Party may, at its cost, take over such defense, provided that, in such event, the indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

## **5.10 Intellectual Property**

**5.10.1** Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to interconnection and access to telecommunications

~~facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.~~

~~5.10.2 The rights and licenses above are granted "AS IS, WITH ALL FAULTS", and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.~~

~~5.10.3 As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then-applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, the Party providing access may require the other, upon written notice, from time to time, to obtain a license or permission for such access or use, make all payments in connection with obtaining such license, and provide evidence of such license.~~

~~5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned. Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.~~

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to

obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its affiliates; 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully



describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by ~~U S WEST Qwest~~ pursuant to an applicable provision herein, CLEC may use the phrase ~~"CLEC is a Reseller of U S WEST Communications services" (the "Authorized Phrase")~~ "CLEC is a Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than ~~U S WEST Qwest~~ services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause end users to believe that CLEC is ~~U S WEST Qwest~~.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the ~~U S WEST Qwest~~ logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to ~~U S WEST Qwest~~ for its prior written approval.

~~5.10.6.5 If U S WEST Qwest determines that CLEC's use of the Authorized Phrase causes end user confusion, U S WEST Qwest may immediately terminate CLEC's right to use the Authorized Phrase.~~

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to ~~U S WEST Qwest~~ or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 ~~CLEC acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and U S WEST respectively (the "Owners"). CLEC recognizes Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to CLEC the other of any right, title or interest in or to the Marks trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. CLEC will do nothing Neither Party will do anything inconsistent with the Owner's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. CLEC will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar to their respective Owners. The Parties shall comply with all applicable law there to as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks.~~

## **5.11 Warranties**

~~5.11.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.~~

~~—governing Marks worldwide and neither Party will infringe the Marks of the other.~~

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing, (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

## **5.11 Warranties**

5.11.1 Except as expressly set forth in this agreement, the Parties agree that neither Party has made, and that there does not exist, any warranty, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose and that all products and services provided hereunder are provided "as is," with all faults.

## **5.12 Assignment**

5.12.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control; however, if CLEC's assignee or transferee has an interconnection agreement with U S WEST, no assignment or transfer control without the consent of the other Party, provided that the performance of this Agreement shall be effective without the prior written consent of U S WEST. Such consent shall include appropriate resolutions of conflicts and discrepancies between the assignee's or transferee's interconnection agreement and this Agreement by any such assignee is guaranteed by the assignor. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

**5.12.2** ~~Without limiting the generality of the foregoing subsection, any merger, dissolution, consolidation or other reorganization of CLEC, or any sale, transfer, pledge or other disposition by CLEC of securities representing more than 50% of the securities entitled to vote in an election of CLEC's board of directors or other similar governing body, or any sale, transfer, pledge or other disposition by CLEC of substantially all of its assets, shall be deemed a transfer of control. If any entity, other than CLEC, involved in such merger, dissolution, consolidation, reorganization, sale, transfer, pledge or other disposition of CLEC has an interconnection agreement with U.S. WEST, the Parties agree that only one agreement, either this Agreement or the interconnection agreement of the other entity, will remain valid. All other interconnection agreements will be terminated. The Parties agree to work together to determine which interconnection agreement should remain valid and which should terminate. In the event the Parties cannot reach agreement on this issue, the issue shall be resolved through the Dispute Resolution process contained in this Agreement.~~

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**5.12.3** Nothing in this section is intended to restrict CLEC's rights to opt into Interconnection Agreements under § 252(i) of the Act.

## **5.13 Default**

**5.13.1** If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

## **5.14 Disclaimer of Agency**

**5.14.1** Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

## **5.15 Severability**

**5.15.1** In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

## **5.16 Nondisclosure**

**5.16.1** All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans and user specific, facility specific, or usage specific information, other than end user information communicated for the purpose of providing directory assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) days after the information is disclosed. The receiving Party shall, from that time forward, treat such information as Proprietary Information.

**5.16.2** Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

**5.16.3** Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

**5.16.4** Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

~~e)5.16.4.1~~ was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

~~b)5.16.4.2~~ is or becomes publicly known through no wrongful act of the receiving Party; or

~~e)5.16.4.3~~ is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

~~d)5.16.4.3~~ is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

e) 5.16.4.4 is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or

f) 5.16.4.5 is approved for release by written authorization of the disclosing Party; or

g) 5.16.4.6 is required to be made public disclosed by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 \_\_\_\_\_ Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is ~~protected~~.

protected. -----In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 \_\_\_\_\_ Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 \_\_\_\_\_ Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 \_\_\_\_\_ Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 \_\_\_\_\_ CLEC forecasts provided to Qwest and forecasting information disclosed by Qwest to CLEC shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 \_\_\_\_\_ The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal

issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Qwest will use aggregated CLEC forecast information to fulfill regulatory filing requirements and as required to fulfill its obligations under this SGAT. In no case shall Qwest disclose aggregated information if such disclosure would, by its nature, reveal individual CLEC forecast information. Also, in no case shall Qwest provide access to this information to its retail marketing, sales or strategic planning personnel.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

## **5.17 Survival**

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the completion of the ~~two year term, termination of this Agreement,~~ and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, **are contemplated to survive (or to be performed after) termination of this Agreement,** shall survive cancellation or termination hereof.

## **5.18 Dispute Resolution**

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with ~~the dispute resolution process set forth in this Section.~~ this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance ~~herewith.~~ herewith. Dispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive, remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar days

after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within thirty (30) fifteen (15) calendar days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate matter is referred to them, such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar days after the date of the Resolution Request, then either Party may demand request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be Such as settled by arbitration two (2) calendar days after the Resolution Request pursuant to the terms of Section 5.18.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three arbitrators, (3) arbitrators knowledgeable about the telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of ("AAA") the Party that initiates dispute resolution under this Section 5.18. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the ~~Beles~~ metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

Dispute(s). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty eight (48) hours of the determination to arbitrate.

5.18.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 5.18.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between Qwest and CLEC, and such resolution with respect to the nature, scope, manner, and timing of discovery shall be final and binding.

5.18.3.3 Arbitrator's Decision.

5.18.3.3.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

5.18.3.3.2 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined. If such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

5.18.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or confidential information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or confidential information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided however that the Party seeking to disclose the information shall first provide fifteen (15) calendar days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.



5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

5.18.8 This Section does not apply to any claim, controversy or dispute between the Party's, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by U.S. WEST/Qwest and accepted by CLEC in accordance with the terms of the Act and the State law of Idaho, applicable federal law and the state law of Arizona. It shall be interpreted solely in accordance with the terms of the Act and the State law of Idaho, applicable federal law and the state law of Arizona.

## **5.20 Responsibility for Environmental Contamination**

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

## **5.21 Notices**

5.21.1 Any notices required by or concerning this Agreement shall be in writing and sent to U.S. WEST shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, or by email were specified in this Agreement to Qwest and CLEC at the addresses shown below:

U.S. WEST

Qwest Corporation

Director Interconnection Compliance  
1801 California, Room 2410

Denver, CO 80202

With copy to:

Attention: Denver, CO 80202

Email

Phone

Fax

With copy to:

Qwest Law Department

Corporate Attention: Corporate

Counsel,

Interconnection

1801 California Street, 49th Floor

Denver, CO 80202

Email

Phone

Fax

and to CLEC at the address shown below:

Name:

Email

Phone

Fax

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section 5.21.

## 5.22 Responsibility of Each Party

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the

limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

### **5.23 No Third Party Beneficiaries**

~~5.23.1 Unless specifically set forth herein, this Agreement does not provide and shall not be construed to provide third parties. The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action, or other privilege right in excess of those existing by reference in this Agreement.~~

### **5.24 Referenced Documents**

5.24.1 All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, U.S. WESTQwest practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, U.S. WESTQwest practice, or publication of industry standards. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.

### **5.25 Publicity**

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

### **5.26 Executed in Counterparts**

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

### **5.27 Compliance**

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, U.S. WESTQwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## **5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994**

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance Law Enforcement Act of 1994 (~~CALEA~~) (CALEA). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

## **5.29 Cooperation**

5.29.1 The Parties agree that this Agreement involves the provision of ~~U.S. WEST~~Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

## **5.30 Amendments**

5.30.1 ~~When this document is being used as an interconnection agreement, it can only be amended in writing, executed by the duly authorized representatives of the Parties. Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.~~

## **5.31 Entire Agreement**

~~5.31.1 This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between U.S. WEST~~Qwest 5.31.1 This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between U.S. WESTQwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

## **5.32 Reserved for Future Use**

## Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or end users, or their property as it employs to protect its own personnel, end users and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of telecommunications transmissions between end users during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any end user at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The ~~U.S. WEST~~Parties' telecommunications network-is/networks are part of the national security network, and as such, ~~legre~~ protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. ~~CLEC is~~The Parties are responsible for covering ~~its~~their employees on such security requirements and penalties.

11.4 ~~U.S. WEST~~Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of ~~U.S. WEST~~Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. ~~U.S. WEST~~Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a ~~U.S. WEST~~Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with ~~U.S. WEST~~Qwest security and safety procedures and requirements.

11.8 ~~U.S. WEST~~Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by ~~U.S. WEST~~Qwest.

11.9 ~~U S WEST Qwest~~ will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. ~~U S WEST Qwest~~ has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on ~~U S WEST Qwest~~ security policies and guidelines.

11.12 When working on ~~U S WEST Qwest~~ ICDF Frames or in ~~U S WEST Qwest~~ equipment line-ups, ~~Qwest~~ and CLEC employees, agents and vendors agree to adhere to ~~U S WEST Qwest~~ quality and performance standards provided by ~~U S WEST Qwest~~ and as specified in this Agreement.

11.13 CLEC shall report all material losses to ~~U S WEST Qwest~~ Security. All security incidents are to be referred directly to local ~~U S WEST Qwest~~ Security – 1-888-U S WEST-SECURE. In cases of emergency, CLEC shall call 911 and 1-888-U S WEST-SECURE.

11.14 CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 ~~CLEC employees will~~ ~~Qwest~~ and CLEC shall ensure adherence by ~~listheir~~ employees, agents and vendors to all ~~U S WEST applicable Qwest~~ environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to ~~U S WEST Qwest~~ all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the ~~U S WEST Qwest~~ identification/access card.

11.18 ~~CLEC's Qwest~~ and CLEC employees, agents and vendors will comply with ~~U S WEST Central Offices~~ ~~shall comply with Qwest central office~~ fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in ~~U S WEST Qwest~~ buildings, Wire Centers, and ~~all~~ other ~~U S WEST Qwest~~ facilities. No open flames shall be permitted anywhere within the buildings, ~~Wire Centers or other facilities~~. Failure to abide by this restriction ~~will~~ may result in immediate denial of access for that individual and ~~will~~ may constitute a violation of the access rules, subjecting CLEC to denial of unescorted ~~access~~.

access. Qwest shall provide written notice within five (5) calendar days of the hazardous CLEC work activity to CLEC prior to denial of access and such notice shall include: 1) identification of the hazardous work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. CLEC will have five (5) calendar days to remedy any safety violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such safety violation of which it has received notice within such five (5) calendar days following receipt of such notice, CLEC shall be denied unescorted access to the affected premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the U-S-WESTQwest buildings or on the grounds.

11.21 No weapons of any type are allowed on U-S-WESTQwest premises. Vehicles on U-S-WESTQwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this SGAT, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds.

11.23 U-S-WESTQwest employees may request CLEC's employee, agent or vendor to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, equipment or services within the facility. facility until the situation is remedied. Qwest shall provide immediate notice of the non-compliant work activity to CLEC and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. Within five (5) calendar days after such notice Qwest shall provide CLEC written notification of remedy for such non-compliant work activity. If such non-compliant work activities pose an immediate threat to the safety of Qwest employees, interference with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of Qwest's facilities, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution. If CLEC fails to correct any safety non-compliance within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct as soon as reasonably possible, Qwest may pursue immediate resolution by expedited Dispute Resolution.

11.24 U-S-WESTQwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a U-S-WESTQwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification will may be asked to vacate the premises and U-S-WEST SecurityQwest security will be notified. Continued violations may result in termination of access privileges. privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or

has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the U-S-WESTQwest Work Environment Centers:

————800-879-3499 (CO, WY, AZ, NM)  
-----800-201-7033 (all other U-S-WESTQwest states)

11.27 CLEC will submit a U-S-WESTQwest Collocation Access Application form for individuals needing to access U-S-WESTQwest facilities. CLEC and U-S-WESTQwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to U-S-WESTQwest Security. If cards or keys cannot be collected, CLEC will immediately notify U-S-WESTQwest at 800-210-8169.

11.30 CLEC will assist U-S-WESTQwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available 7 days a week, 24 hours a day.

11.31 Qwest and CLEC employees, agents and vendors will notify U-S-WESTQwest Service Assurance (800-713-3666) when prior to gaining access into a Central Office after hours central office after hours, for the purpose of disabling central office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify U-S-WESTQwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. U-S-WESTQwest may deny access to anyone who in the reasonable judgment of U-S-WESTQwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to U-S-WESTQwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to U-S-WESTQwest Security, who will provide it to the appropriate U-S-WESTQwest personnel.

11.34 ———Revenue Protection. U-S-WESTQwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, 900 and 976 numbers. U-S-WESTQwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.35 Law Enforcement Interface. U-S-WESTQwest provides emergency assistance to 911 centers and law enforcement agencies seven days a week/twenty-four hours a day. Assistance



includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or \*57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

**11.36 ~~U-S-WEST~~Owest** provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from ~~U-S-WEST~~Owest Wire Centers or cross boxes.

**11.37** In all cases involving telephone lines served from ~~U-S-WEST~~Owest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, ~~U-S-WEST~~Owest will perform trap/trace, Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide ~~U-S-WEST~~Owest with a ~~24~~twenty four (24) hour a day, ~~7~~seven (7) days a week contact for processing such requests, should they occur.

## Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

### 12.1 Description

12.1.1 ~~U.S. WEST~~ Qwest has developed and shall continue to provide Operational Support Systems (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and ~~U.S. WEST's~~ Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the ~~U.S. WEST's~~ Qwest's OSS and databases. ~~U.S. WEST's~~ Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing. This section describes the interfaces that ~~U.S. WEST~~ and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by ~~U.S. WEST~~ Qwest in training sessions and documentation, such as the "Interconnect Mediated Access User's Guide." ~~U.S. WEST~~ Qwest will continue to make improvements to its electronic interfaces as technology evolves, ~~and U.S. WEST's legacy systems evolve, or CLEC needs require.~~ Qwest shall provide notification to CLEC consistent with the provisions of this Section of the Co-Provider Industry Change Management Process (CICMP) set forth in Section 12.2.6.

12.1.2 ~~Through its electronic gateways, U.S. WEST's gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to U.S. WEST's Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing for resale and unbundled network elements, functions. For those functions with a retail analogue, such as pre-ordering and ordering and provisioning of resold services, U.S. WEST's Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and provisioning of unbundled elements, U.S. WEST's Unbundled Elements, Qwest shall provide CLEC access to U.S. WEST's Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.~~

### 12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

#### 12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 ~~CLEC shall use electronic interfaces for orders placed using the LSR Ordering Process for the services it supports. The electronic interface gateways include both the Interconnect Mediated Access (IMA) Electronic Data Interchange (EDI) interface and the Interconnect Mediated Access (IMA) Graphical User Interface (GUI).~~

~~42.2.1.2 The IMA EDI interface provides a single interface for Pre Order and Order transactions from CLEC to U S WEST and is transaction based, rather than batch based. The interface standards for IMA EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines, and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above standards are specified in the IMA GUI and IMA EDI disclosure documents. IMA GUI and IMA EDI disclosure documents are provided in conjunction with the implementation responsibilities contained in this Section.~~

~~42.2.1.3 The IMA GUI also provides a single interface for Pre Order and Order transactions from CLEC to U S WEST and is browser-based. The IMA GUI interface is based on the LSOG and utilizes a WEB standard technology, Hyper-Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to our email messages.~~

#### ~~42.2.1.4 Functions~~

~~42.2.1.4.1 Pre-ordering refers to the set of activities performed in conjunction with placing an order. Pre order is packaged as a separate activity. Pre order functions are described in the IMA User's Guide located at [http://www.uswest.com/carrier/training/imauser\\_42.html](http://www.uswest.com/carrier/training/imauser_42.html).~~

#### ~~42.2.1.4.2 Ordering and Provisioning~~

~~Submitting an LSR will result in the provisioning and installation, if necessary, of an end user's service. The functional set associated with ordering is described in the IMA User's Guide located at [http://www.uswest.com/carrier/training/imauser\\_42.html](http://www.uswest.com/carrier/training/imauser_42.html).~~

#### ~~42.2.1.5 Forecast of Usage~~

~~42.2.1.5.1 CLEC shall supply U S WEST with a forecast of products and volumes anticipated to be ordered through the electronic interface gateways on a quarterly basis.~~

~~42.2.1.5.2 U S WEST will use CLEC's forecast to provide CLEC sufficient capacity to provide the services and elements requested. If CLEC exceeds its capacity without notification, to the extent that it causes degradation to other users' response times, CLEC's use of its capacity on the IMA GUI or IMA EDI server may be discontinued until a resolution can be mutually agreed to by both Parties. U S WEST will attempt to notify CLEC before discontinuing CLEC's use of the IMA GUI or IMA EDI server; however U S WEST reserves the right to discontinue use if it is unable to contact CLEC.~~

~~42.2.1.5.3 When CLEC requests from U S WEST more than fifty (50) SecureIDs, CLEC shall use a T1 line instead of dial-up capabilities.~~

Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines, and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines shall be specified in the EDI disclosure documents.

12.2.1.3 The CUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The CUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre-Ordering. Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic CUI. Cases described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to customer service records (CSRs) for Qwest retail or resale end users. The information will include billing name, service address, billing address, service and feature subscription, directory listing information, and long distance carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 Facility availability, loop qualification and loop make-up information, including, but not limited to, loop length, presence of bridged taps, repeaters, and loading coils. This Section 12.2.1.4.1.7 shall apply only to CLEC orders for Unbundled Loops or Loop combinations.

12.2.1.4.8 A list of valid available CEAs for Unbundled Loops.

12.2.1.4.9 A list of 1-5 individual meet points or a range of meet points for shared Loops.

12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use

12.2.1.5.2 Reserved for Future Use

12.2.1.5.3 When CLEC requests from Qwest, more than fifty (50) SecurIDs

for use by CLEC customer service representatives at a single CLEC location. CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

#### 12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 The Exchange Access Control and Tracking (EXACT) system may be used for orders placed using the ASR process. EXACT is Qwest shall provide a computer-to-computer batch file interface for submission of ASRs, based upon the OBF Access Service Order Guidelines (ASOG). The EXACT interface accepts a batch file that is transmitted via a Network Data Mover (NDM) connection to U.S. WEST from CLEC. It is CLEC's responsibility to obtain the appropriate software to interface with U.S. WEST's EXACT system. The EXACT functions are documented in the Access Service Ordering Guide. This guide is produced by and can be obtained from Alliance for Telecommunications Industry Solution (ATIS).

Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

#### 12.2.1.7 Facility Based EDI Listing Process

The Process. Qwest shall provide a Facility Based EDI Listing Process is a single interface from CLEC to U.S. WEST interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. This interface enables CLEC listing data to be translated and passed into the U.S. WEST listing database. After U.S. WEST's daily batch processing, a Qwest shall supply exceptions to these Confirmation/Completion record (for every DON provided on input) is returned to CLEC via an EDI 955 transaction. guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CICMP process to consider any suggestions made by CLECs to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC

with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.8 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

12.2.1.9.9 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.10 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.11 When CLEC places an electronic order, Qwest shall provide

notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.12 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.10 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

## 12.2.2 Maintenance and Repair

12.2.2.1 Maintenance and Repair. The electronic interface gateway, which is a Web-based resolution of end-user's report and assistance needs, is reported to CLEC. They Qwest shall provide electronic interface gateways, including an electronic bonding interface and a GUI interface, for reviewing a customer's trouble history at a specific location, conducting testing of a customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between U-S-WEST/Qwest and CLEC while the Trouble Report (TR) is open and a U-S-WEST/Qwest technician is working on the resolution. resolution CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

12.2.2.2 CLEC shall use the electronic interface gateways for reporting trouble. The electronic interface gateways are comprised of either the Mediated Access System Electronic Bonding (MEDIACC-EB) interface or the IMA GUI interface.

12.2.2.3 The MEDIACC-EB interface uses CMP protocol over X25 packet switching network using ANSI T1M1.5-227/228 standards.

12.2.2.4 The IMA GUI also provides a single interface for trouble reporting from CLEC to U-S-WEST and is browser-based. The IMA GUI interface uses a Berkeley Socket interface based upon ANSI T1M1.5-227/228 standards. The IMA GUI uses JAVA as the standard.

### 12.2.2.5 Functions

12.2.2.5.1 Maintenance and Repair. The functions, processes and systems used in repair are based on a Trouble Report (TR), which is an electronic document maintained in one or more OSS. TR contents and business processes are documented in the IMA Repair Guide located at <http://www.uswest.com/carrion/training/imarepguide.html>.

### 12.2.3 Hours of Operation

~~12.2.3.1 U.S. WEST's electronic interface gateways will be available to CLECs as published in the IMA User's Guide located at [http://www.uswest.com/carrier/training/imauserw\\_42.html](http://www.uswest.com/carrier/training/imauserw_42.html).~~

### 12.2.3 Interface Availability

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

~~12.2.3.2 U.S. WEST shall notify CLECs~~Qwest shall notify CLECs in a timely manner regarding system downtime through mass facsimile~~mail~~ distribution and pop-up windows in the IMA GUI. All referenced times are Mountain Time.

~~12.2.3.3 The preceding limits represent the period of when U.S. WEST commits that its OSS interfaces and downstream systems will be functioning (except for unforeseen system crashes) and its personnel will be available to assist CLEC. U.S. WEST's OSS interfaces are typically available 23 hours a day. CLEC may call any maintenance and repair issues to the applicable repair center 24 hours per day, seven days per week. U.S. WEST shall provide CLEC current repair contact numbers.~~

### 12.2.4 Billing

~~12.2.4.1 For products billed out of the U.S. WEST~~Qwest Interexchange Access Billing System (IABS), ~~U.S. WEST~~Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

~~12.2.4.2 For products billed out of the U.S. WEST~~Qwest Customer Record Information System (CRIS), ~~U.S. WEST~~Qwest will utilize the existing EDI standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing. Any deviation from these standards and guidelines shall be documented and accessible to CLEC.

### 12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC~~provide more detailed information than the bills.~~ They come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information



#### 12.2.5.1 Bills

**12.2.5.1.1 CRIS Summary Bill** - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by ~~U.S. WEST~~ Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the ~~Qwest U.S. WEST~~ region in which CLEC is operating. ~~The CRIS Summary Bill transmission methods are listed in the Interconnect and Resale Resource Guide located at [http://www.uswest.com/carter/guides/resource\\_guides.html](http://www.uswest.com/carter/guides/resource_guides.html).~~

**12.2.5.1.2 IABS Bill** - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, billing account number (BAN) and bill cycle. ~~The IABS Summary Bill & Sub-Account Bill~~

~~Data transmission methods are listed in the Interconnect and Resale Resource Guide located at [http://www.uswest.com/carter/guides/resource\\_guides.html](http://www.uswest.com/carter/guides/resource_guides.html).~~

#### 12.2.5.2 Files and Reports

**12.2.5.2.1 Daily Usage Record File** provides the accumulated set of call information for a given day as captured or recorded by the network switches. This file will be transmitted Monday through Friday, excluding ~~U.S. WEST~~ Qwest holidays. This information is a file of unrated ~~U.S. WEST~~ Qwest originated usage messages and rated CLEC originated usage messages. It is provided in Alliance for Telecommunication Industry Solution (ATIS) standard (Electronic Message Interface) EMI format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains ~~multi-multi~~ state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. ~~U.S. WEST~~ Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale; and
- b) Unbundled Switch Port.

**12.2.5.2.2** The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

**12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages** - ~~U.S. WEST~~ Qwest will distribute in-region ~~intraLATA~~ IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the

daily usage information is transmitted to a carrier, it will contain these records for these types of calls as well.

**12.2.5.2.4 Loss Report** provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the end user has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch ~~Port~~ Port; and

~~This report media is described in the Interconnect and Resale Resource Guide located at [http://www.uswest.com/carrier/guides/resource\\_guides.html](http://www.uswest.com/carrier/guides/resource_guides.html)~~ UNE-P for POTS.

**12.2.5.2.5 Completion Report** provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch ~~Switch~~ Switch; and

~~This report media is described in the Interconnect and Resale Resource Guide located at [http://www.uswest.com/carrier/guides/resource\\_guides.html](http://www.uswest.com/carrier/guides/resource_guides.html)~~ UNE-P for POTS.

**12.2.5.2.6 Category 11 Records** are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between ~~US WEST~~ Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

**12.2.5.2.7 Category 1150 series records** are used to exchange summarized Meet Point Billed access ~~minutes of use~~.

~~The minutes of use.~~ Qwest will post the transmission method/media types available for these mechanized records ~~are available the Interconnect and~~

~~Resource~~ ~~Resource~~ ~~Guide~~ ~~located~~ ~~at~~  
~~http://www.uswest.com/carrer/guides/resource\_guides.html on its website.~~

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

- a) SAG provides Address and Serving Central Office Information.  
Information.
- b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

## 12.2.6 Modifications to OSS Interfaces

~~CLEC and U.S. WEST agree to discuss the modification of OSS interfaces based upon evolving standards (e.g., data elements, protocols, transport networks, etc.) and guidelines issued by or referenced by relevant ATIS committees. Establishment of new, or changes to, industry standards and guidelines will be reviewed semi-annually. The review will consider standards and guidelines that have reached final closure as well as those published in final form. Both Parties agree to evaluate evolving standards and determine the relevant modification to be implemented based upon the latest approved version adopted or the latest version reflecting final closure by the relevant ATIS committee or subcommittee. As a result of the review, U.S. WEST shall draft appropriate interface specifications that shall be made available to CLEC through the electronic gateway disclosure document located at <http://www.uswest.com/disclosures/notdisclosure400.html> interface. Changes shall be implemented in the next release after the distribution of the electronic gateway disclosure document to the CLECs or as negotiated during the review session.~~ **Change Management**

Qwest agrees to maintain a change management process, known as the Co-Provider Industry Change Management Process (CICMP), that is consistent with industry guidelines, standards and practices. Qwest and CLEC shall participate in discussions of OSS development in CICMP. The CICMP shall: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), release notifications (RN), systems release life cycles, and communications; (ii) provide a forum for CLECs as an industry to discuss and prioritize CLEC-initiated and Qwest-initiated CRs; (iii) develop a mechanism to track and monitor CRs and RNs; and (iv) establish communication intervals where appropriate in the process. Qwest will inform CLECs through the CICMP of all planned changes to Qwest software, local interconnection products, business processes and Technical Publications, including additions, deletions, or changes which affect any document or information CLEC receives from Qwest or any document or information Qwest sends CLEC. Qwest will seek CLEC input on the planned changes and will report such consideration in a timely manner. Through the CICMP, Qwest will give notice of the establishment of new OSS interfaces and the retirement of OSS interfaces. Qwest will maintain an escalation process so that CICMP issues can be escalated to a Qwest representative authorized to make a final decision.

**12.2.6.1** In the course of establishing operational ready system interfaces between ~~U.S. WEST~~Qwest and CLEC to support local service delivery, CLEC and ~~U.S. WEST~~Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and ~~U.S. WEST~~Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

**12.2.6.2** Release updates will be based on regulatory obligations as dictated by the FCC or Commissions and, as time permits, the agreed upon changes requested by the CLEC Industry Change Management Process (CICMP). ~~U.S. WEST~~Qwest will provide to CLEC the features list for modifications to the interface. Specifications for interface modifications will be provided to CLEC three (3) weeks prior to the release date. ~~CLEC is required to upgrade to the current release within six months of the installation date.~~

#### **12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces**

**12.2.7.1** Before any CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire. ~~This questionnaire is provided by the U.S. WEST account manager and details information needed by U.S. WEST to establish service for CLEC.~~

**12.2.7.2** Once ~~U.S. WEST~~Qwest receives a complete and accurate New Customer Questionnaire, ~~U.S. WEST~~Qwest and CLEC will mutually agree upon time frames for implementation. ~~Implementation of connectivity between CLEC and the OSS interfaces.~~

#### ~~12.2.8 U.S. WEST Responsibilities for On-going Support for OSS Interfaces~~

~~12.2.8.1~~ **12.2.8** Qwest Responsibilities for On-going Support for OSS Interfaces ~~U.S. WEST~~Qwest will support previous ~~IMA~~ EDI releases for six (6) months after the next subsequent ~~IMA~~ EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

~~12.2.8.2~~ ~~U.S. WEST~~**12.2.8.1** Qwest will provide written notice to CLEC of the need to migrate to a new release.

~~12.2.8.3~~ ~~U.S. WEST~~**12.2.8.2** Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

~~12.2.8.5~~ ~~12.2.8.3~~ Re-certification is the process by which CLECs demonstrate the ability to generate correct transactions for the new release. For each new release a decision will be made for each product as to the necessity of re-certification. ~~U.S. WEST~~Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document. ~~CLEC Responsibilities for On-going Support for OSS Interfaces is documented in the next section.~~

~~12.2.8.5~~

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

#### 12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces

12.2.9.1 If using the IMA GUI interface, CLEC must work with U.S. WEST to all take reasonable efforts to train CLEC personnel on the IMA GUI functions that CLEC will be using. U.S. WEST and CLEC shall concur on which IMA GUI functions should be included in CLEC's training. U.S. WEST and CLEC shall make reasonable efforts to schedule training in a timely fashion.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the IMA GUI interface-EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test program to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing - CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to Controlled Production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment - Qwest's stand-alone testing environment will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The Stand-Alone Testing Environment provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. Stand-Alone Testing uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All Stand-Alone test pre-order queries and orders are subjected to the same edits as production pre-order and order transactions. This testing phase is optional. 12.2.9.3.3 Interoperability Testing - CLEC has the option of participating with Qwest in interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of account information valid in Qwest production systems. All interoperability pre-order queries and orders are subjected to the

same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be processed.

12.2.9.3 If CLEC is using the IMA EDI interface, U.S. WEST 12.2.9.3.5  
If CLEC is using EDI, Qwest shall provide CLEC with a pre-allocated amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with U.S. WEST/Qwest for certification of its business scenarios. CLEC must comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to U.S. WEST, U.S. WEST/Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the IMA EDI interface, CLEC must work with U.S. WEST/Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. U.S. WEST/Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted only for a specific release of the IMA EDI interface. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel if technically feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.4.2 Intentionally Left Blank

12.2.9.5 New releases of the IMA EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made

by the ~~U S WEST Qwest~~ coordinator in conjunction with the release manager of each ~~IMA~~ EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, if technically feasible.

12.2.9.6 CLEC will contact the ~~U S WEST Qwest~~ EDI Implementation Coordinator to initiate the migration process. CLEC must complete the re-certification and migration to the ~~new IMA~~ EDI release within six (6) months of the deployment of the new release. CLEC may not need to certify to every new EDI release, however, CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and testing of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two months after the implementation of the next release. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two months after the next release implementation may continue to use additional products and activities until two months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the interoperability environment before two months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to ~~U S WEST Qwest~~.

~~12.2.9.8 Additional information regarding the IMA EDI re-certification process is documented by the CLEC Industry Team in Converting to a New IMA EDI Release located in the CICMP web site at <http://www.uswest.com/carrier/bulletins/cicmp.html>.~~

~~12.2.9.9 In the event of electronic interface trouble, CLEC shall use its best efforts to isolate and resolve the trouble using the guidelines. If CLEC cannot resolve the problem, then CLEC should contact the CLEC Systems Help Desk. The CLEC Systems Help Desk is CLEC's Single Point of Contact for electronic interface trouble.~~

~~12.2.10 CLEC~~ 12.2.9.8 Reserved for Future Use

12.2.9.9 Reserved for Future Use

12.2.9.10 CLEC will use all reasonable efforts and provide sufficient support and personnel to ensure that issues that arise in migrating to a new release of the IMA interface are handled in a timely manner.

12.2.10 CLEC Support

12.2.10.1 U.S. WEST shall provide assistance to Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are the OSS functions to which U.S. WEST is providing access processed efficiently. This assistance will include training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via training, documentation and CLEC Help Desk.

12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desks available Monday through Friday, 8:00 a.m. until 8:00 p.m. Mountain Time, excluding U.S. WEST holidays. The Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the U.S. WEST Qwest system for hardware configuration requirements with relevance to IMA-EDI and IMA GUI-EDI and GUI interfaces; system configuration requirements with relevance to IMA-EDI and IMA GUI-EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through IMA-EDI and IMA GUI-EDI and GUI interfaces. These system errors are limited to: POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLECs is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located at <http://www.uswest.com/carrier/> on Qwest's wholesale web site. Qwest will provide an Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.



### 12.2.11 Compensation/Cost Recovery

~~Recurring and non-recurring startup charges as applicable will be billed as specified by the Commission upon completion of an appropriate cost proceeding. On an interim basis, recurring and non-recurring Recovery On-going and one-time OSS startup charges, as contained in Exhibit A of this Agreement apply.~~  
applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any ongoing or one-time OSS startup charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

### 12.3 Maintenance and Repair

#### 12.3.1 Service Levels

12.3.1.1 U.S. WEST/Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner regardless that which U.S. WEST/Qwest provides for itself, itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, U.S. WEST/Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by U.S. WEST to its end users. Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 U.S. WEST/Qwest will provide repair services that it provides to itself, its End User Customers and quality to that provided by itself, its End User Customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

#### 12.3.2 Branding

12.3.2.1 ~~Should U.S. WEST need to use various forms for communication with CLEC end users (while out on premise dispatches on behalf of CLEC, for example), U.S. WEST will use unbranded forms.~~

~~42.3.2.2 If required by CLEC, U.S. WEST will use branded forms at CLEC's full expense, covering training costs, storage, printing, distribution and all other branding-related costs. Qwest shall use unbranded maintenance and repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded maintenance and repair forms. Qwest may not unreasonably interfere with branding by CLEC.~~

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

### 12.3.3 Service interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the other's facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring carriers involved in its services; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. ~~The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required.~~ The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.3 To facilitate trouble reporting and repair, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting CLECs and itself as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

### 12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, or Point of Interface. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble location has been identified as likely to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.1 Pursuant to FCC Tariff #5, Section 13, U.S.WEST will bill appropriate Trouble Isolation Charges for dispatched work done by U.S.WEST when 12.3.4.2 Within CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the end-user side of the NID. If trouble is found to be in CLEC's portion of the network, the tariff is available on the U.S.WEST End User Customers side of the Demarcation Point. If the trouble is on the End User Customers side of the Demarcation Point, and the CLEC authorizes Web site: <http://tariffs.uswest.com/0000/old/tariff5054000005/>

12.3.4.2 Other Trouble Isolation Charges may be imposed by U.S.WEST on CLEC for other services, repair work incurred on the part of CLEC and later found to be CLEC's network components. Qwest to repair trouble on the CLEC's behalf. Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 NO CLEC shall be responsible for the maintenance of the facilities located in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) days, Maintenance of Service charges shall not apply.

### **12.3.5 Inside Wire Maintenance**

Except where specifically required by state or federal regulatory mandates, U.S.WEST/Qwest will not perform any maintenance of inside wire (premises wiring beyond the end user's NID/demarcation point) for CLEC or its end users.

### **12.3.6 Testing/Test Requests/Coordinated Testing/UNEs**

12.3.6.1 U.S.WEST shall have no obligation to test an end user's line or circuit, but may in appropriate circumstances. Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customer, its Affiliates, or any other party.

**12.3.6.2** ~~Prior to any test being conducted on a line, U S WEST~~Qwest ~~conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User, Qwest must receive a trouble report from CLEC.~~

**12.3.6.3** ~~U S WEST and users are not given test results. On manually reported trouble, U S WEST will not provide to CLEC the test results for its trouble reports. For electronically reported trouble, CLEC may be provided various basic test results. On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same form and manner that Qwest provides to End User Customers, its End User Customers, or other party.~~

**12.3.6.4** ~~U S WEST's test systems do not support testing of unbanded network elements. CLEC shall isolate the trouble condition on UNE and users to U S WEST's portion of the end user's service before U S WEST's~~Qwest's ~~portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that end user.~~  
~~line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same manner and the same form as it provides itself, its End User Customers, its End User Customers, its End User Customers, or other party.~~

**12.3.6.5** ~~Qwest shall test to ensure electrical continuity of all UNEs, including central office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.~~

### **12.3.7** ~~Workcenter~~Work Center Interfaces

**12.3.7.1** ~~U S WEST~~Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work\_centers involved in the trouble resolution processes.

### **12.3.8** Misdirected Repair Calls

**12.3.8.1** ~~CLEC and U S WEST~~Qwest will employ the following procedures for handling misdirected repair calls:

**12.3.8.1.1** ~~CLEC and U S WEST~~Qwest will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.

**12.3.8.1.2** End users of CLEC shall be instructed to report all cases of trouble to CLEC. End users of ~~U S WEST~~Qwest shall be instructed to report all cases of trouble to ~~U S WEST~~Qwest.

**12.3.8.1.3** To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service.

**12.3.8.1.4** CLEC and U.S.WESTQwest will provide their respective repair contact numbers to one another on a reciprocal basis.

**12.3.8.1.5** In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal or external solicit end users to market services. Either U.S.WEST or the CLEC may respond with accurate information to answer end user questions either. To the extent a question is made by a third party, either Party may respond. If a question will be referred to the proper provider of local Exchange Service, however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

#### 12.3.9 Major Outages/Restoral/Notification

**12.3.9.1** U.S.WESTQwest will notify CLEC of major network outages as soon as is practicable, either orally the same day or in writing, if possible, Qwest's End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain proprietary information such as customer information, U.S.WESTQwest will utilize the same third party and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail to the CLEC's contact, and may also be sent via internal e-mail within Qwest. The email notification outside shall contain: initial report, abnormal U.S.WEST condition and estimated restoration time/delay, subsequent condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to U.S.WESTQwest and/or industry standards.

**12.3.9.2** U.S.WESTQwest will meet with associated personnel from CLEC to share contact information and review U.S.WESTQwest's outage restoral processes and notification processes.

**12.3.9.3** U.S.WEST'sQwest's emergency restoration process operates on a 7X24 basis.

#### 12.3.10 Protective Maintenance

**12.3.10.1** U.S.WESTQwest will perform scheduled maintenance equaling substantially the same type and quality to that which it provides to Bell itself, its End User Customers, its Affiliates, or any other party.

**12.3.10.2** U.S.WESTQwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Such process work will include establishment of reasonable thresholds and

~~notification standards. Qwest shall provide notice of potentially CLEC customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any Service, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances provided, however, that Qwest shall provide emergency maintenance as prompt as possible to maintain or restore service and shall advise CLEC in writing of any such maintenance.~~

#### ~~12.3.11 Repair Operations~~

~~12.3.11.1 U.S.WEST's Qwest's repair operation time is seven days a week, 24 hours a day. Not all functions or locations are covered 24 hours. Scheduled emergency repair is on a 7X24 basis. Where such 7X24 coverage is not available, U.S.WEST's repair operations center (always available 7X24) can call-out technicians or other Qwest's main operations center (always available 7X24) can call-out technicians or other personnel required for the situation.~~

#### ~~12.3.12 Escalation~~

~~12.3.12.1 U.S.WEST will provide trouble resolution procedures to CLEC. Such procedures will be based on the procedures U.S.WEST employs for POTS in its own U.S.WEST locations are manual processes.~~

~~12.3.12.2 U.S.WEST repair personnel will call CLEC within 24 hours of receiving reporting centers.~~

#### ~~12.3.13 Dispatch~~

~~12.3.13.1 U.S.WEST will provide maintenance dispatch personnel on the same schedule as it provides for its own end-users.~~

~~12.3.13.2 Upon the receipt of a trouble report from CLEC, U.S.WEST will do all that is reasonable and practical, according to internal and industry standards, to resolve the repair condition. U.S.WEST will dispatch repair personnel on occasion to repair the condition. It will be U.S.WEST's decision whether or not to send a technician out on a dispatch. U.S.WEST reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when U.S.WEST believes the dispatch is not necessary, appropriate charges will be billed by U.S.WEST to CLEC for those dispatch-related costs.~~

~~12.3.13.3 For POTS lines, U.S.WEST will not request authorization from CLEC prior to dispatch. For lines supported by U.S.WEST's designed services process, U.S.WEST may accept CLEC authorization to dispatch. U.S.WEST's operational processes are~~

~~regularly reviewed and may be altered in the future. Should processes be changed, CLEC will be notified.~~

~~12.3.13.4 CLEC shall perform appropriate trouble isolation and screening prior to submitting a trouble report to U.S. WEST.~~

#### ~~12.3.14 Electronic Reporting~~

~~12.3.14.1 CLEC may submit Trouble Reports through IMA or MEDIACC EB.~~

#### ~~12.3.15 Intervals/Parity~~

~~12.3.15.1 Similar trouble conditions, whether reported on behalf of U.S. WEST and users or on behalf of CLEC and users, will receive similar commitment intervals.~~

#### ~~12.3.16 Jeopardy Management~~

~~12.3.16.1 Notification to CLEC will be given on the same basis that a trouble report interval is likely to be missed.~~

#### ~~12.3.17 Trouble Screening~~

~~12.3.17.1 CLEC shall screen and test its and user trouble reports completely enough to insure that it sends to U.S. WEST only trouble reports that involve U.S. WEST facilities.~~

~~12.3.17.2 U.S. WEST will cooperate with CLEC to show CLEC how U.S. WEST screens trouble conditions in its own systems, so that CLEC will employ similar techniques in its system.~~

#### ~~12.3.18 Maintenance Standards~~

~~12.3.18.1 U.S. WEST will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.~~

~~12.3.18.2 On manually reported trouble, U.S. WEST will inform CLEC of repair completion as soon as is practical after its completion. On electronically reported trouble reports, the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway.~~

~~12.3.19 End User Interfaces required for the identified situation.~~

#### 12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: teler, duty supervisor, manager, director, vice president. The first escalation

point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than 3 troubles in a 30-day period, pursuant to 12.3.12.1.

#### 12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards to resolve the reported trouble. Qwest will dispatch repair personnel on occasion to make the condition right. Qwest reserves the right to make a dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 On FOTS lines and designed services, Qwest is responsible for the maintenance and repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC customer premises without prior CLEC authorization. For dispatch to the CLEC customer premises, Qwest shall obtain prior CLEC authorization with the exception of maintenance of Qwest's cable network and Qwest ATE and other clear explanations.

#### 12.3.13.4 Intentionally Left Blank

#### 12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the electronic bonding or CLE interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

#### 12.3.15 Intervals/Parity

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

#### 12.3.16 Jeopardy Management

12.3.16.1 Qwest will notify CLEC in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any



other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

#### 12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its end user trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network services or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will agree to allow CLEC to allow CLEC to view Qwest response trouble notifications in its own system, as that CLEC may use any other tool or facility to its centers.

#### 12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually-reported trouble, Qwest will inform CLEC of repair completion substantially the same time and manner as Qwest provides to all of its User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

#### 12.3.19 Customer Interaction Responsibility

12.3.19.1 CLEC will be responsible for all interactions with its end users including service call handling and notifying its end users of trouble status and resolution.

12.3.19.2 All U-S-WESTQwest employees who perform repair service for CLEC end users will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC customers.

#### 12.3.20 Repair12.3.20 Repair Call Handling

12.3.20.1 Manually-reported repair calls by CLEC to U-S-WESTQwest will be answered with the same quality and speed as U-S-WESTQwest answers calls from its own end-users. End User Customers.

#### 12.3.21 Single12.3.21 Single Point of Contact

**12.3.21.1** U S WESTQwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven days a week, twenty-four hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being reported.

#### ~~12.3.22 Network~~12.3.22 Network Information

12.3.22.1 U S WESTQwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about U S WESTQwest's Network, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, and is accessible to CLEC via U S WESTQwest's Web site.

12.3.22.3 CPNI information and HXX activity reports are also included in this database.

12.3.22.4 ICONN is updated every two weeks; data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

#### ~~12.3.23 Maintenance~~12.3.23 Maintenance Windows

12.3.23.1 Generally, U S WESTQwest performs major switch maintenance during off-hours, during certain "maintenance windows". Major switch maintenance activities include switch conversions, switch generic upgrades and switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 a.m., Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., MountainTime.

~~12.3.23.3 Although U S WESTTime. Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions when this will not be possible.~~  
possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices, such as embargoes, moratoriums, and outages, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

#### 12.3.23.3 Reserved For Future Use.

12.3.23.4 Planned generic upgrades to U S WESTQwest switches are included in the ICONN database, available to CLEC via U S WESTQwest's Web site.

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#### 12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one switch and its replacement with another. Conversion of switch software or hardware capabilities, the addition of capacity to a switch or the addition of trunk capacity to a switch do not constitute switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames upon which the switch ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a switch or frame conversion planned day of cut-over to the replacement frame(s) or switch. The actual conversion time typically is set for midnight of the Conversion Date. This may require the actual Conversion Date to migrate into the early hours of the day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A switch or frame conversion embargo is the time period that the switch or frame trunk-side facility connections are frozen to facilitate conversion from one switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for trunk-side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall not file CLEC Dispute capabilities.

12.3.24.4.1 ASRs for switch or frame trunk-side facility augmenta to capacity or changes to switch or frame trunk-side facilities must be filed by CLEC with a due date prior to or after the applicable embargo in order as listed in the ICONN database. Qwest shall reject switch or frame trunk-side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's due date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For switch and trunk-side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) days before the Conversion Date.

12.3.24.4.3 For switch and trunk-side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old switch or frame to the new switch or frame, and sixty (60) days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until 5 days after the

Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from 60 days prior to the Conversion Date until 5 days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the trunk side of the switch. For conversion of trunks where CLEC requests a like-for-like circuit design from the old switch to the new switch on a like-for-like basis, the embargo period shall extend 60 days prior to the Conversion Date until 5 days after the Conversion Date. If CLEC requests a change of circuit characteristics or modification of circuit characteristics to the new switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) days prior to the Conversion Date until five (5) days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain due dates, with the exception of LSRs that result in CLEC service orders, billing orders related to LNP orders, record orders, billing change orders, for non-wireless LNP orders, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during a switch or frame conversion quiet period may create the potential for loss of LSRs or CLEC operational processes caused by the switch or frame conversion. LSRs of any kind issued during the switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a due date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested due date, will be processed after the quiet period expires.

CLEC End User Customer service may request a due date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon April 15. The request shall be made at least 10 days prior to the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a due date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon April 15. The request shall be made at least 10 days prior to the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change and shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End Users, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Qwest's switch software and hardware upgrades are not subject to the switch conversion embargoes or quiet periods described above. If such generic switch or software upgrades require significant activity-related interruptions or other related embargoes and/or quiet periods, Qwest shall provide CLEC substantially the same time and manner as Qwest does for itself, its End Users, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End Users, its Affiliates, or any other party during such switch hardware additions.

## Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an unbundled network element or ancillary service that is not already available as described herein shall be treated as a Bona Fide Request (BFR). U S WEST shall use the BFR Process to determine the terms and timetable for providing the requested Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to the technical feasibility of the requested interconnection, access to UNELs or ancillary services, if available, and the technical feasibility of new/different points of interconnection. U S WEST will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate U S WEST form for BFRs. CLEC and U S WEST shall work together to prepare the BFR form. This form shall be as specified by the form developed by the existing Fee schedule in the Agreement. The form will request, but not require, the following information:

- (a) a technical description of each request for Network Element or new/different points of interconnection or ancillary services;
- (b) the desired interface specification;
- (c) each requested type of interconnection or service;
- (d) a statement that the interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;
- (e) the quantity requested;
- (f) the specific location requested;
- (g) if the requested unbundled network element is a "proprietary element" as defined in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that access to such Network Element is necessary, that the failure to provide access to such Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such requested proprietary element; and (h) if the requested Unbundled Network Element is a non-proprietary element as specified in Section 251(d)(3) of the Act, CLEC must submit documentation that demonstrates that denial of access to such non-proprietary unbundled network element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such unbundled network element.

17.3 Within fifteen (15) calendar days of its receipt, U S WEST shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, U S WEST shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR.

17.4 Within thirty (30) calendar days of its receipt of the BFR and all information necessary to process it, U S WEST shall provide to CLEC a preliminary analysis of the BFR. The preliminary analysis shall specify U S WEST's conclusions as to whether or not the

~~requested interconnection or access to an unbundled network element complies with the unbundling requirements of the Act.~~

~~17.5 If U S WEST determines during the thirty (30) day period that a BFR does not qualify as an unbundled network element or interconnection or ancillary service that is required to be provided under the Act, U S WEST shall advise CLEC as soon as reasonably possible of that fact, and U S WEST shall promptly, but in no case later than ten (10) calendar days after making such a determination, provide a written report setting forth the basis for its conclusion.~~

~~17.6 If U S WEST determines during the thirty (30) day period that the BFR qualifies under the Act, it shall notify CLEC in writing of such determination within ten (10) calendar days.~~

~~17.7 Within as soon as feasible, but no later than thirty (30) calendar days after receipt of the BFR, CLEC shall submit a BFR quote under the Act to U S WEST. The quote to CLEC a BFR quote. The BFR quote shall include, at a minimum, a description of each interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the interconnection, unbundled network element or ancillary service and any minimum volume and term commitments required.~~

~~17.8 If U S WEST has indicated minimum volume and term commitments, then within 30 business days of its receipt of the BFR quote, CLEC must either agree to purchase under those commitments, cancel the BFR, or seek mediation or arbitration.~~

~~17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but in the event of such cancellation, CLEC will pay U S WEST 50% of the development costs incurred in providing the BFR quote, plus the stated NLE or UNE or ancillary service rates to the extent that those development costs are not otherwise reimbursed.~~

be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested interconnection, access to UNEs or ancillary services and the technical feasibility of new/different points of interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together with Qwest to complete the BFR form and the BFR quote request that will be handled on an expedited basis. This form shall be accompanied by the Processing Fee specified in Exhibit A of this Agreement. Qwest will refund one-half of the Processing Fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of interconnection or access;



17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of whether the BFR is a request for service under the BFR. Thereafter, Qwest shall promptly advise CLEC of any change in the BFR and information required for processing an analysis of the BFR. If either Party believes that Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) day period that the BFR does not qualify as an Unbundled Network Element or Interconnection or access to an element that is required to be provided under the Act or state law, Qwest shall advise CLEC of such determination, the basis of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) day period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar days, but in no case later than the end of such twenty-one (21) day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of such Interconnection, Network Element, and ancillary service, the quantity to be provided, any tariff specifications, and the applicable rates (transmission, long distance, and other applicable rates), the construction and installation charges of the interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a Request for an Interconnection, an Unbundled Network Elements or any combinations thereof, or ancillary services, and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services, in the L.O.F. ECN B.F.R. not be subject to the B.F.R. process. To the extent CLEC has submitted a request for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services, Qwest shall be referred to the New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof or ancillary services. ICB pricing intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Section 17.2 above. The burden of proof is upon Qwest to prove that it is not substantially similar to a previous BFR.

17.13 The total cost charged by CLEC shall not exceed the CLEC quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's carrying cost data on the studies for the Interconnection, Unbundled Network Elements or ancillary services. CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days. 17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may seek arbitration pursuant to the Dispute Resolution provision in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information if requested by Qwest under the non-disclosure provisions of this Agreement.

**18.1** For purposed of this section the following definitions shall apply:

18.1.1 Data of the books, records, and other documents used in the billing process for services performed, including reciprocal compensation including, without limitation, reciprocal compensation and facilities provided under this Agreement; and Agreement.

[illegible]

10.2.1 Either Party may request to perform an Arbitration.

18.2.2 The Arbitration shall be on a Party to Party (PP) business basis. 90 days written notice by the requesting Party to the non-requesting Party.

**18.2.3** The Audit or Examination shall occur during normal business hours. However, such audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two Audits requested by each Party in this Agreement in any 12-month period.  
period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

**18.2.6** The location of the Audit or Examination shall be the location where the

requested records, books and documents are retained in the normal course of business.

**18.2.7** All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least 24 months.

**18.2.8 Audit or Examination Expenses**

~~18.2.8~~ **18.2.8.1** Each Party shall bear its own expenses ~~incurred by the Audit,~~ provided that the expense of any special data collection shall be born by the requesting Party.

~~In connection with conduct of the Audit or Examination, the requesting Party will pay for the cost of any special data collection requested by the other Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.~~

**18.2.8.2** Notwithstanding the foregoing, the audited Party shall pay all of the Auditing Party's commercially reasonable expenses by the amount of Audit or Examination fees. If a difference between the actual fee and the amount determined by the Audit that exceeds five percent of the amount billed, then results in a refund and/or reduction in the amount due to the Party.

**18.2.9** The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

**18.2.10** In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.

~~The portion of the expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.~~

**18.2.11** ~~Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) days after the Parties receipt of the final audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest 18.2.11 The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s). All errors not corrected rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days shall be escalated to the Vice President level.~~

after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process: (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

14.3 All information received or reviewed by the requesting Party or third party in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a non-disclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and COWESTWest will aggregate other competitors' data to ensure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data as required by the needs of the Audit.

14.4 Information provided by the Parties for purposes of this Section shall be used solely for the purpose of allowing such information for purposes of this Section and shall not be bound by the confidentiality obligations set forth in Section 5.16. In no case shall any information be shared with the Parties' retail marketing, sales or strategic planning.

## **Section 19.0 - CONSTRUCTION CHARGES**

**19.1** All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to unbundled loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to unbundled loops or ancillary services specifically provided for in this Agreement, U.S. WEST Qwest will consider requests to build additional or further facilities for network Interconnection and access to unbundled loops or ancillary services, as described in the applicable section of this Agreement.

**19.2** All necessary construction will be undertaken at the discretion of U.S. WEST Qwest, consistent with budgetary responsibilities, compensation for the impact on the general body of end users and without discrimination among the various carriers.

**19.3** A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC should not to have Accepted the quote, U.S. WEST Qwest shall be entitled to a reservation charge of \$1000 per CLEC for the expense of U.S. WEST Qwest for producing the quote and design.

**19.4** In the event a construction charge is applicable, CLEC's service application date Application Date will become the date upon which U.S. WEST Qwest receives the required payment.

## Section 20.0 - SERVICE PERFORMANCE

~~U.S. WEST~~ Owest is currently developing performance measures in a process created by the Regional Oversight Committee (ROC). ~~U.S. WEST~~ Owest will amend this Agreement when the ROC process is complete to incorporate all aspects of the ROC final ~~decision~~ decision pertaining to Service Performance. Owest will also amend this Agreement when Section 22.0 - SIGNATURE PAGE IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

(CLEC) \_\_\_\_\_ U S WEST Communications, Inc.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name Printed/Typed \_\_\_\_\_

Name Printed/Typed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

the Commission completes its Performance Assurance Plan that is being conducted separately from the ROC.



## EXHIBIT F

### 1. The Special Request Process shall be used for the following requests:

1.1 Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.

1.2 Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor.

1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:

1.3.1 that is made up of UNEs that are defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;

1.3.2 that is made up of UNEs that are ordinarily combined in the Qwest network.

1.4 Requesting an Unbundled Network Element that has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDPL BFR between OC-3 and OC-192 and new varieties of subloops.

1.5 Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Qwest will consider the BFR time frame to have started upon receipt of the original Special Request application form.

2. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website.

3. Qwest shall acknowledge receipt of the Special Request within two (2) business days of receipt.

4. Qwest shall respond with an analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

## Exhibit I -- Individual Case Basis (ICB)

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests -- whether they be for rates or intervals -- are processed through and by Qwest.
2. ICB Rate Intervals
  - 2.1 For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.
  - 2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Qwest shall provide CLEC with an ICB quote within the stated specific intervals:
    - 2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.
    - 2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Section 17.
    - 2.2.3 Quotes for all collaboration requests shall be provided in accord with the Section 8 process.
    - 2.2.4 Quotes for all Field Connection Point requests shall be provided in accord with Section 9.3.
    - 2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.
  - 2.3 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Qwest shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Qwest shall request the release of vendor cost information when Qwest communicates with the vendor(s) when Qwest seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Qwest under the non-disclosure sections of this Agreement.
3. ICB Provisioning Intervals

- 3.1 For those products and services provided pursuant to this SGAT that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Qwest representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.

## ADVICE ADOPTION LETTER

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ (CLEC) hereby agrees to be bound by the rules, terms and conditions which it has adopted and which is attached to the New Queensland CLEC Agreement and to the CLEC Agreement entered into by CLEC with the New South Wales CLEC.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

CLEC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT M  
INTERIM ADVICE ADOPTION LETTER

Director of Interconnection Compliance

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product:

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as on \_\_\_\_\_, and to its Interconnection Agreement with \_\_\_\_\_.

CLEC certifies that the rates, terms and conditions of Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been posted for the New Product.

Qwest acknowledges that CLEC believes that the rates, terms and conditions for the Qwest New Product should be altered and that CLEC enters into this Interim Advice Adoption Letter with the express intention to renegotiate the rates, terms and conditions associated with the Qwest New Product pursuant to the terms of Section 1.7.1.2 of the SGAT. CLEC enters into this Interim Advice Adoption Letter without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Advice Adoption Letter under the Interconnection Agreement, the Act, FCC or state Commission rules.

CLEC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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